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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~299.~~ 76.

NEAL DOW, PLAINTIFF IN ERROR,

vs.

BRADISH JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

FILED NOVEMBER 1, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 299.

NEAL DOW, PLAINTIFF IN ERROR,

vs.

BRADISH JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

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1 *Complaint.*

UNITED STATES OF AMERICA.

Maine District, ss:

To the honorable justice of the Supreme Court of the United States:

And now comes Neal Dow, of Portland, Maine, by Josiah H. Drummond and Nathan Webb, his attorneys, and complains that in the records and proceedings, and also in the rendition of judgment in a cause of action of debt between Bradish Johnson, plaintiff, and said Neal Dow, defendant, tried in the circuit court of the United States for said Maine district, at April term thereof, A. D. eighteen hundred and seventy-six, and in which judgment was rendered against him on the thirteenth day of September, A. D. eighteen hundred and seventy-six, manifest error hath intervened, to the great damage of the said Neal Dow:

Wherefore he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

NEAL DOW,
By his attorneys, JOSIAH H. DRUMMOND,
NATHAN WEBB,
For interest of U. S.

Allowed.

2 UNITED STATES, *ss:*

The President of the United States to the judges of the circuit court holden in and for the district of Maine, greeting:

Because, that in the records and process, and also in the rendering of judgment in a suit before you, or some of you, between Neal Dow, of Portland, Maine, plaintiff in error, and Bradish Johnson, a citizen of the State of New York, defendant, a manifest error has intervened to the great damage of the said plaintiff in error, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the second Monday of October next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[SEAL.] A. H DAVIS, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Associate Justice of the Supreme Court of the United States.

3 *Return on writ of error.*

Circuit court United States, district of Maine, September term, A. D. 1876.

And now here the judges of the circuit court of the United States, in and for said district, make return of this writ, by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof I, Abner H. Davis, clerk of said circuit court, have hereunto set my hand and the seal of said court this twenty-first day of September, in the year of our Lord eighteen hundred and seventy-six.

[SEAL.] A. H. DAVIS, *Clerk.*

4 *Certificate.*

Circuit court United States, district of Maine, September term, A. D. 1876.

I, Abner H. Davis, clerk of the United States circuit court, Maine district, hereby certify that a true and perfect copy of the foregoing writ of error, wherein Neal Dow, of Portland, is plaintiff in error and Bradish Johnson, a citizen of the State of New York, is defendant in error, was lodged for the defendant in error in the clerk's office on the twenty-first day of September, A. D. 1876.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this twenty-fifth day of October, A. D. 1876.

[SEAL.] ABNER H. DAVIS, *Clerk.*

5 *Copy of writ.*

MAINE DISTRICT, *ss:*

The President of the United States of America to the marshall of our district of Maine, or his deputy, greeting:

We command you to attach the goods or estate of Neal Dow, of Portland, in the county of Cumberland and State of Maine, and a citizen of said State of Maine, in our district of Maine, to the value of three thousand dollars, and summon the said Neal Dow (if he may be found in your district) to appear before our judges of our circuit court of said United States, for the first circuit next to be holden at Portland, within and for our said district of Maine, on the twenty-third day of April next: then and there, in our said court to answer unto Bradish Johnson, of the city, county, and State of New York, and a citizen of said State of New York, in a plea of debt, for that the said plaintiff by the consideration of the judge of the sixth district court of New Orleans, held within and for the State of Louisiana on the ninth day of April, A. D., eighteen hundred and sixty-three, recovered judgment against the said Dow, by the name of Neal Dow, of Portland, in the county of Cumberland and State of Maine, for the sum of fourteen hundred and fifty-four and eighty-one one hundredth dollars, with legal interest from judicial demand, and costs of suit, as by the record thereof now remaining in said court appears, a copy whereof, duly authenticated, the said plaintiff here in court produceth, which said judgment is in full force, and not

reversed, annulled, or satisfied; whereby an action hath accrued to the said plaintiff to have and recover of the said Dow the said
6 sum of fourteen hundred and fifty-four $\frac{81}{100}$ dollars, with legal interest from judicial demand, and costs of suit taxed at eighteen dollars and fifteen cents; yet the said Dow, though requested, hath never paid the same, but wholly refuses so to do.

Also for that the said plaintiff, by the consideration of the judge of the sixth district court of New Orleans, held within and for the State of Louisiana on the ninth day of April, A. D. eighteen hundred and sixty-three, recovered judgment against the said Dow, by the name of Neal Dow, of Portland, in the county of Cumberland and State of Maine, for the sum of fourteen hundred and fifty-four dollars and eighty one cents, with legal interest from judicial demand, and costs of suit, as by the record thereof now remaining in said court appears, a copy whereof, duly authenticated, the said plaintiff here in court produceth, which said judgment is in full force, and not removed, annulled, or satisfied; whereby an action hath accrued to the said plaintiff to have and recover of the said Dow the said sum of fourteen hundred and fifty-four dollars and eighty-one cents, with legal interest from judicial demand, and costs of suit taxed at eighteen dollars and fifteen cents; and the said plaintiff avers that the legal interest upon the said sum of fourteen hundred and fifty-four dollars and eighty-one cents, from judicial demand to the day of the date of this writ, is one hundred fifty-seven dollars and sixty cents, making in all the sum of sixteen hundred and thirty dollars and fifty-six cents; yet the said Dow, though requested, hath never paid the same, but wholly refuses so to do.

7 Also for that the said plaintiff, by the consideration of the judge of the sixth district court of New Orleans, held within and for the State of Louisiana, on the ninth day of April, A. D. eighteen hundred and sixty-three, recovered judgment against the said Dow, by the name of Neal Dow, of Portland, in the county of Cumberland and State of Maine, for the sum of fourteen hundred and fifty-four dollars and eighty-one cents, with legal interest from judicial demand and costs of suit, as by the record thereof now remaining in said court appears, a copy whereof, duly authenticated, the said plaintiff here in court produceth, which said judgment is in full force, and not removed, annulled, or satisfied; whereby an action hath accrued to the said plaintiff to have and recover of the said Dow the said sum of fourteen hundred and fifty-four dollars and eighty-one cents, with legal interest from judicial demand, and costs of suit; and the said plaintiff avers that the legal interest upon the said sum of fourteen hundred and fifty-four dollars and eighty-one cents from judicial demand, to the day of the date of this writ, is eighteen dollars and fifteen cents, and that the said costs of suit are eighteen dollars and fifteen cents, making in all the sum of sixteen hundred and thirty dollars and fifty-six cents; yet the said Dow, though often requested, hath never paid the same, but wholly refuses so to do, to the damage of the said Bradish Johnson, as he says, the sum of three thousand dollars, which shall then and there be made to
8 appear, with other due damages.

And have you there this writ, with your doings therein.

Witness the honorable Salmon P. Chase, at Portland, the thirtieth (30th) day of March, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] GEO. F. EMERY, *Clerk.*

[Fifty cents. Internal revenue U. S.]

repealed and abrogated, and the union now subsisting between Louisiana and the other States, under the name of the United States of America, is hereby dissolved.

"We further declare and ordain that the State of Louisiana
12 hereby resumes the rights and powers heretofore delegated to the Government of the United States of America, and its citizens are absolved from allegiance to said government, and she is in full possession of all the rights and sovereignty that appertains to a free and independent State."

Whereby said State seceded from the Government of the United States, and on the same day established a government independent of the Government of the United States, and continued to maintain the same until long after the ninth day of April aforesaid, and that said State and the inhabitants thereof, from said twenty-sixth day of January, A. D. 1861, until said ninth day of April and long afterwards, were in rebellion against the Government of the United States, and levying and carrying on war against said government in order to uphold and maintain their own independent government aforesaid; and that in consequence thereof, long before said ninth day of April, A. D. 1863, the military force of the United States, engaged in suppressing said rebellion by order of the President of the United States, took forcible possession of all that part of the State of Louisiana comprising the district of the sixth district court of New Orleans aforesaid, and held military occupation thereof until long after said ninth day of April, A. D. 1863, and martial law was then and there and during all that time established and in force; by reason of all which the said sixth district court of New Orleans ceased to have lawful jurisdiction between parties and
13 concerning causes of action therein, and on said ninth day of April, A. D 1863, had no jurisdiction to render the judgment described in the declaration in favor of said plaintiff against this defendant. All which he is ready to testify. Wherefore he prays judgment if the plaintiff ought to have or maintain his action aforesaid against said defendant and for his costs.

By JOSIAH H. DRUMMOND &
NATHAN WEBB,
His Attorneys.

And for further plea in this behalf, by leave of court here for this purpose, first had and obtained, the defendant says that the plaintiff ought not to have and obtain his action aforesaid against said defendant, because he says that long before said ninth day of April, A. D. 1863, to wit, on the first day of January, A. D. 1860, he was and ever since had been a citizen of the State of Maine, and that long before the ninth day of April, A. D. 1863, to wit, on the twenty-sixth day of January, A. D. 1861, an ordinance of secession was duly passed by the legislature of said State of Louisiana and approved by the governor thereof, and afterwards, to wit, on the first day of February, A. D. 1861, was submitted to and adopted by the people of said State, in the words and figures following, to wit:

"We, the people of the State of Louisiana, in convention assembled, do declare and ordain, and it is hereby declared and ordained,
14 that the ordinance passed by the State November 22, 1807, whereby the Constitution of the United States of America and the amendments of said Constitution were adopted, and all the laws and ordinances by which Louisiana became a member of the Federal Union, be, and the same are hereby repealed and abrogated, and the union

now subsisting between Louisiana and the other States, under the name of the United States of America, is hereby dissolved.

"We further declare and ordain that the State of Louisiana hereby resumes the rights and powers heretofore delegated to the Government of the United States of America, and its citizens are absolved from allegiance to said government, and she is in full possession of all the rights and sovereignty that appertain to a free and independent State."

Whereby said State seceded from the Government of the United States, and on the same day established a government independent of the Government of the United States, and continued to maintain the same until long after the ninth day of April aforesaid, and that said State and the inhabitants thereof, from said twenty-sixth day of January, A. D. 1861, until said ninth day of April and long afterwards, were in rebellion against the Government of the United States, and levying and carrying on war against said government in order to uphold and maintain their own independent government aforesaid; and that in consequence thereof, long before said ninth day of April, A. D. 1863, the military force of the United States engaged in suppressing said rebellion by order of the President of the United States, took forcible possession of all that part of the State of Louisiana comprising the district of said sixth district court of New Orleans aforesaid, and held military occupation thereof until long after said ninth day of April, A. D. 1863, and martial law was then and there and during all that time established and in force; that the defendant was, on the first day of May, A. D. 1862, and until long after the ninth day of April, A. D. 1863, in the military service of the United States, duly commissioned by the President thereof, as brigadier-general, and was there and then acting under the orders of the President of the United States according to the laws thereof and the articles of war, and especially under the General Order No. 109, dated the twenty-second day of July, A. D. 1862, and issued the sixteenth day of August, A. D. 1862, which was in the words and figures following, to wit:

[General Orders No. 109.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, August 16, 1862.

The following is an order of the President of the United States, dated July 22, 1862:

First. Ordered, that military commanders within the States of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, in an orderly manner, seize and use any property, real or personal, which may be necessary or convenient for their several commands as supplies, or for other military purposes, and that while property may be destroyed for proper military objects, none shall be destroyed in wantonness or malice.

Second. That military and naval commanders shall employ as laborers within and from said States so many persons of African descent as can be advantageously used for military and naval purpose, giving them reasonable wages for their labor.

Third. That as to both property and persons of *of* African descent, accounts shall be kept sufficiently accurate and in detail to show quantities and amounts, and from whom both property and such persons shall have come, as a basis upon which compensation can be made in proper cases; and the several departments of this government shall

attend to and perform their appropriate parts towards the execution of these orders.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

And he further avers that acting in the performance of his duty as brigadier-general aforesaid, he was in command of the troops of the United States in said State of Louisiana, and said body of troops by command of this department under the authority aforesaid, seized from the plaintiff, then a citizen of said State of Louisiana, certain chattels necessary and convenient for supplies for *for* the Army of the United States, and for other military purposes; and said
17 plaintiff, on account of the seizure of said chattels as aforesaid, the plaintiff commenced an action in said sixth district court of New Orleans for the taking and seizing aforesaid; and he further says that said plaintiff prosecuted his action, and said court proceeded on said ninth day of October to render therein the judgment against the defendant declared on the plaintiff's writ, but he says that said sixth district court, for the reasons aforesaid, had no jurisdiction of said action or over this defendant at the time of the commencement thereof, or at any time since, or at the time of the rendition of said judgment. All which he is ready to verify.

Wherefore he prays judgment if the plaintiff his aforesaid action ought to have or maintain, and for his costs.

By JOSIAH H. DRUMMOND &
NATHAN WEBB,
His Attorneys.

And for a further plea in this behalf, by leave of court first had and obtained, the defendant says that the plaintiff his aforesaid action thereof against him ought not have and maintain, because he says that long before said ninth day of April, A. D. 1863, and long before the alleged trespasses in the supposed record of said "sixth district court of New Orleans, in the State of Louisiana," mentioned, to wit, on the first day of May, A. D. 1861, the people of said State of Louisiana were in rebellion against the government, and had wholly submitted and
18 overthrown the authority of said government in the State of Louisiana, and continued to levy war against the United States until long after said ninth day of April, A. D. 1863; that the Government of the United States, from said first day of May, A. D. 1861, until long after said ninth day of April, A. D. 1863, was engaged in suppressing said rebellion and restoring its own proper authority, and for that purpose maintained a military force of the United States in said State of Louisiana during all said time, which military force during all said time was engaged in actual warfare with the people of Louisiana, their aiders and abettors; and for the purpose of suppressing the rebellion aforesaid and restoring the authority of the Government of the United States, the said government, by its proper officers, declared and maintained martial law in said State of Louisiana from said first day of May, A. D. 1861, till said ninth day of April, A. D. 1863, and long afterwards, and deprived all the courts in said State of Louisiana, including said sixth district court of New Orleans, of all jurisdiction, except such jurisdiction as should be conferred upon them by authority of the officer of the Army commanding the forces of the United States in said State of Louisiana; that no jurisdiction over persons in the military service of

the United States for acts performed in the line of their duty was by such authority conferred upon said sixth district court of New Orleans.

And said court, between said first day of May, A. D. 1861, and
19 said ninth day of April, A. D. 1863, and on said ninth day of April, had no jurisdiction over any person engaged in the military service of the United States and under command of the officer commanding the forces of the United States in said State of Louisiana, and for acts done in the line of duty in said service. And this defendant, on the first day of May, A. D. 1862, then and ever since a citizen of Maine, being then and there commissioned as brigadier-general by the President of the United States, and he continued in said service as brigadier-general as aforesaid, in said State of Louisiana, from said first day of May, A. D. 1862, until said ninth day of April, A. D. 1863, and long afterwards under the orders of the President of the United States and the general commanding the forces of the United States in said State, and long before and at the time of the commencement of the proceedings in said sixth district court of New Orleans, and during their pendency and at the time of the rendition of said judgment was in said service, acting under the orders of his superior officers of said forces of the United States in suppressing said rebellion and in restoring the authority of the Government of the United States in said State. And he further avers that, acting in the performance of his duty as brigadier-general aforesaid, and in obedience to the lawful commands of his superiors,

he was, on the day when the trespasses in said record mentioned
20 are alleged to have been committed, in command of a body of troops of the United States in said State of Louisiana, and said body of troops, by command of this defendant, then and there seized from the plaintiff, then a citizen of said State of Louisiana, certain chattels necessary and convenient for supplies for the Army of the United States and for other military purposes. And said plaintiff, on account of the seizure of said chattels as aforesaid, the plaintiff commenced an action in said sixth district court of New Orleans for the taking and seizing aforesaid. And he further says that said plaintiff prosecuted his action and said court proceeded, on said ninth day of April, to render the judgment against the defendant declared on in the plaintiff's writ; but he says that said sixth district court, for the reasons aforesaid, had no jurisdiction of said action or over this defendant at the time of the commencement thereof, or at any time since, or at the time of the rendition of said judgment. All which he is ready to verify.

Wherefore he prays judgment if the plaintiff his action thereof against him ought to have and maintain and for costs.

By JOSIAH H. DRUMMOND AND
NATHAN WEBB,
His Attorneys.

21 *Endorsement on the pleadings.*

MAINE DISTRICT, *ss:*

OFFICE OF THE CLERK C. C. U. S.

Received and filed Dec. 2, 1873.
Attest:

GEO. F. EMERY, *Clerk.*

A true copy of the original pleadings on file.
Attest: A. H. DAVIS, *Clerk.*

Replications.

Circuit court United States, first district.

DISTRICT OF MAINE, *ss:*

BRADISH JOHNSON
vs.
NEAL DOW.

And the said plaintiff, as to the said plea of the said Dow first above pleaded in bar, says that he, by anything therein alleged, ought not to be barred from having and maintaining this said action against the said Dow, because he says that there is such a record of the said judgment remaining in the said district court, as the said plaintiff has in his writ and declaration alleged; and this he is ready to verify by the said record, which he prays may be inspected by the court in such manner as this court here shall order.

Wherefore he prays judgment, and for his debt and damages and costs.

By BRADBURY & BRADBURY AND
J. & E. M. RAND,
His Attorneys.

22 And as to the said pleas of the said Dow, secondly, thirdly, and fourthly, above pleaded in bar, the said plaintiff says that he, by anything therein alleged, ought not to be barred from having and maintaining his said action against the said Dow, because he says that at the time of the commencement of the said action set forth and described in the declaration aforesaid, and during the pending thereof, and on said ninth day of April, 1863, the day of the alleged rendition of the said alleged judgment, the said district court had lawful jurisdiction over and between parties and concerning causes of action within said district; and on said ninth day of April, 1863, had jurisdiction to render the judgment set forth and described in the declaration aforesaid in favor of said plaintiff and against said defendant; and this he prays may be inquired of by the country.

By BRADBURY & BRADBURY AND
J. & E. M. RAND,
His Attorneys.

Endorsement on replications.

MAINE DISTRICT, *ss:*

OFFICE OF CLERK C. C. U. S.

Filed Feb. 27, 1874.
Attest:

GEO. F. EMERY, *Clerk.*

A true copy of the original on file.
Attest:

A. H. DAVIS, *Clerk.*

23 *Demurrer & joinder.*

Circuit court of the United States, first circuit, Maine district.

BRADISH JOHNSON
vs.
NEAL DOW.

And the said defendant says that the plea aforesaid, by the plaintiff, in manner and form aforesaid above, in replying to the defendant's second, third, and fourth pleas, and the matter in the same contained, are not sufficient in law for the plaintiff to have his said action thereof maintained against him, to which the defendant has no necessity, nor is bound by the law in anywise to answer; and this he is ready to verify.

Wherefore, for want of a sufficient replication in this behalf, the defendant, as before, prays judgment, and that the plaintiff may be barred from having his said action thereof against him, and for his costs.

By JOSIAH H. DRUMMOND AND NATHAN WEBB,
His Attorneys.

And the plaintiff (protesting that the above demurrer is irregular and illegal, and should not be received) says that his replication, and the matter therein contained, are good and sufficient in law to maintain his said action; all which he is ready to verify.

24 Wherefore, for want of a sufficient reply to a denial thereof, the plaintiff prays judgment, and for his damages and costs.

By BRADBURY & RAND,
His Attorneys.

Endorsement on demurrer & joinder.

June 3, '74. Filed in C. C. U. S.
Attest:

G. F. EMERY, *Clerk.*

A true copy of the original on file.
Attest:

A. H. DAVIS, *Clerk.*

RECORD OF PROCEEDINGS IN THE STATE OF LOUISIANA, SIXTH DISTRICT COURT OF NEW ORLEANS, NO. 10348.

Petition.—Filed January 27th, 1863.

STATE OF LOUISIANA,
Sixth District Court, New Orleans:

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

To the honorable the sixth district court of New Orleans:

The petition of Bradish Johnson, a citizen of the State of New York and of the United States of America, respectfully shows:

25 That Neal Dow, who resides in the State of Maine, is justly indebted to petitioner in the full sum of sixteen hundred and

eleven $\frac{29}{100}$ dollars, with interest from judicial demand for this, to wit:

That petitioner is now and has been for several years past the owner of a plantation and slaves in the parish of Plaquemines, Louisiana, on the left bank ascending of the Mississippi River, and about forty-three miles from New Orleans. That on the 6th September, 1862, during the temporary absence of petitioner from his plantation, the steamer Avery, in charge of Captain W. B. Snell, Company B, Thirteenth Maine Regiment, with a force under his command, stopped and landed at said plantation and took therefrom 12 (twelve) hogsheads Woodland refined sugar, 12 (twelve) hogsheads brown sugar, and one other hogshead of Woodland refined sugar, making in all twenty-five hogsheads sugar; and that the said force under the command aforesaid plundered the dwelling-house of said plantation, which house and contents was likewise the private property of the petitioner, and took therefrom one silver pitcher, a half-dozen silver knives, a half-dozen silver spoons, one fish knife, a half-doz. silver teaspoons, and other articles which cannot be specified at the present time, but which petitioner reserves to himself the right to claim in these proceedings.

That these illegal, wanton, oppressive, and unjustifiable acts
26 and doings of Captain Snell and the officers and soldiers under his command were perpetrated under a verbal and secret order of Neal Dow, who was then a brigadier-general in the service of the United States, and then in command of Fort Jackson and St. Philip, and who, by his secret orders, unauthorized by his superiors or by any provision of law martial, or by any requirements of necessity growing out of a state of war, wantonly abused his power and inflicted upon petitioner the wrongs which he herein complains of, and for the reparation of which the laws of the United States and of this State hold him personally responsible.

Petitioner annexes a full and detailed list of the articles and their present value (a portion of the sugar taken having been recovered), amounting to sixteen hundred and eleven $\frac{29}{100}$ dollars.

Wherefore petitioner prays that Neal Dow be cited to appear and answer this petition, and after due proceedings be condemned to pay petitioner the sum of sixteen hundred and eleven $\frac{29}{100}$ dollars with interest, costs, and general relief.

(Signed) DURANT AND HORNOR,
Attorneys for Petitioner.

Document annexed to petition.—Filed January 29, 1863.

List of articles taken and missing still.

27	4,353 lbs. white refined sugar, 13 c	$565 89
	6,460 " yellow " @ 9 c	581 40
3 guns, 1 @ $95, 2 @ $35 ea		165 00
1 silver pitcher		200 00
½ doz. silver knives, @ $6 each		36 00
½ " " spoons, @ $5		30 00
1 fish knife		13 00
½ doz. silver teaspoons, @ $40		20 00
		1,611 29

Citation.

STATE OF LOUISIANA,
Sixth District Court of New Orleans:

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

Mr. NEAL DOW: You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable R. B. Howell, judge of the said court, the 27th day of January, in the year of our Lord 1863.

(Signed) [SEAL.] S. G. HAMILTON,
D'y Clerk.

28 *Sheriff return.*

Received January 27th, 1863, and on the 28th day of same month and year served copy of the within citation and accompanying petition on Neal Dow, the defendant herein, personally. Returned same day.

ARTHUR HART,
D'y Sheriff.

Default.

Sixth district court.

TUESDAY, *February 17th*, 1863.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

On motion of Durant and Honor, attorneys for the plaintiff, Bradish Johnson, and upon showing to the court that defendant herein has failed to answer, though duly cited, it is ordered that judgment by default be entered against him.

Testimony.—Filed February 24th, 1863.

Sixth district court.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

29 Testimony taken in open court to *to* confirm the default ere n taken on 16th February, 1863.

ENOCH FOSTER, junior, witness for plaintiff, sworn, says: That he is in the Army of the United States, and is first lieutenant of Company H, Thirteenth Maine Regiment.

I have known the plaintiff nearly two months, and the defendant,

Neal Dow, sixteen months. The plaintiff is a sugar planter below the city, and defendant is a brigadier-general of the U. S. Army.

In September, 1862, I was with my company at Fort St. Philip; General Dow was in command of both forts; that is, Forts Jackson & St. Philip, but Major Grover was in special command of Fort St. Philip.

I was not at plaintiff's plantation in September last. I do not know that any company of soldiers was sent in that month to plaintiff's plantation. I know that a detachment of soldiers left the Fort St. Philip and went up the river; I cannot state, for want of means of knowing, for what purpose they went; I cannot state the month.

I was requested to proceed to New Orleans by General Dow, who placed a letter in my hands addressed to Lieutenant Brainard of the same regiment, which I delivered to him in New Orleans. I do not know the contents of this letter; I never read it.

30 Question. What do you know about the connection of this letter with a silver pitcher?

I do not know that there was any connection between the letter and a silver pitcher.

Question. Did you receive from any one, and if so, from whom, any silver pitcher, about the time you delivered the letter to Lieutenant Brainard?

I cannot say that I received a silver pitcher.

[Q.] Did you see any pitcher when you delivered the letter to Lieutenant Brainard?

I did.

Question. Will you describe the pitcher?

I took it to be a silver pitcher; it would hold, I think, three quarts; it was partially covered with a new paper, I think; it was of octagon shape, so far as I saw. I cannot say whether there were any letters engraved on it or not.

Question. Did the pitcher ever come into your possession, and if so, when and how?

It was delivered to me, about the time I saw it, by Lieutenant Brainard.

Question. What did you do with the pitcher?

I think I ordered Lieutenant Brainard to deliver the pitcher to Chaplain Blake of the 13th Maine Regiment; and since then I know nothing of the pitcher.

Question. With what object did you give this order?

As Chaplain Blake was to return to Fort St. Philip before I should.

Question. Do you know Captain W. B. Snell, Company B, 13th Maine Regiment?

31 I do; he is still connected with this regiment, and in this capacity.

(Signed) ENOCH FOSTER, JR.

Sworn to in open court this 24th February, 1863.

(Signed) JASP. JAMES,
Dy Clerk.

Order, case continued.

Sixth district court.

TUESDAY, *24th February*, 1863.

BRADISH JOHNSON
vs. } No. 10348.
NEAL DOW.

This day appeared Charles W. Horner, of counsel for plaintiff in this

case, and moved the court to confirm the judgment by default herein entered; when, after hearing the evidence of the witness, Enoch Foster, jr., on motion of said counsel, it is ordered that this case be continued for further evidence.

Testimony.—Filed March 9th, 1863.

Sixth district court.

BRADISH JOHNSON *vs.* NEAL DOW. } No. 10348.

THOMAS JEFFERSON DECKER, witness for plaintiff, affirms in
32 open court, declares and says, that he knows plaintiff, Bradish Johnson, for seven years and over; he don't know defendant. I am overseer of plaintiff's plantation in parish of Placquemines, right-hand bank descending of river Mississippi, and about 44 miles from N. O. In the month of September, 1862, plaintiff was away from his plantation, and I was in charge both as manager and overseer, as I had been for a number of years past.

On the 6th Sept., 1862, steamboat W. S. Avery came to the plaintiff's Woodland plantation, landed at wharf in front of sugar-house. She had lot [of] soldiers, in charge of Captain Wm. B. Snell, 13th Maine Regiment. Capt. Snell placed pickets round yard, and Capt. Snell came with a lieut. to witness' house on plantation; told witness he came for some sugar, as he understood we had some in the sugar house. He said he was ordered by Gen'l Neal Dow to get some. I told him that we had sugar belonging to the plantation and would as soon they had it as anybody, provided they would pay for it. He said the Government of the U. S. would pay for it. I told him I presumed he w'd give a receipt for it. He said no, he would not receipt for it; he was ordered to take the sugar and report to Gen'l Dow. I remarked to him I would go and open the sugar-house, which I did. After looking at the sugar,
33 he selected 12 hogsh'ds of first quality, marked "Woodland refined," branded on the head. He also selected at the same time 12 h'h'ds of third sugar, marked "Woodland" only. I ordered a mule to be put to the carrier on the R. R. to take it down to the wharf. He ordered his men, negroes & others, to break it down and roll it on the cars and put it aboard of the steamboat W. S. Avery. While I was absent a few minutes from the sugar-house, on my returning to the sugar-house with Capt. Snell, I discovered the men had broken open two other h'h'ds of sugar, and the negroes and soldiers were filling it in and carrying it away in sacks and knapsacks. I remonstrated with Capt. Snell, and told him it was not the way to do business; that they were stealing and destroying the sugar. He remarked they should not do it; it was wrong. He required two or three negroes to put the sugar back they had in their sacks on the platform. Notwithstanding, they had already carried off about a hogshead. I told him I should charge him with another hogshead besides what he required in his order, and I hoped he would report it. After shutting up sugar-house, we returned to the yard of the dwelling-house and found the soldiers and negroes who came with the capt. had entered the dwelling-house and the dairy-room and taken from the dairy-room all the butter, milk, and sweetmeats there deposited.
34 I also found they had taken all the silver ware belonging to the dwelling-house, consisting of a fine water-pitcher, spoons, knives

and forks, and fish-knife. I also found the rooms all opened, the drawers pulled out, and the rooms generally ransacked by the soldiers and negroes that came with Capt. Snell. The soldiers went all over the garden and cut the bananas and carried them off with them. Some of the negroes that came went to the hospital, took all the mosquitoe-bars, most of the bedding, and beds. They also went to the upper story of the sugar-house and took the blankets and mosquito bars from three other beds. I had then remonstrated with *with* Capt. Snell and told him his soldiers had taken all the silver ware, and that it was wrong to do so. He told me he would see to it; go down to the river and have it brought back. He did not do it. Some of the soldiers took the clothing of a little orphan boy called John McGinly; then they took between 50 and 60 negroes, little and big, from the plantation, and [went] aboard and left.

I asked Capt. Snell when he first came to the plantation on this occasion if he had orders from Gen. Dow to take the sugar; I meant written orders, tho' I did not so state it. Capt. Snell told me he had no written orders, only verbal orders. I remarked it was a strange way of doing business to take property for the government without
35 proper orders. Capt. Snell said it was not material; he would report to Gen'l Dow, and it would be all right. We lost on this occasion two guns from Woodland plantation; both belonged to Bradish Johnson. One of the guns cost $95 and one $35. I don't know the value of the silver ware taken on this occasion. It was old and had been in the family many years, and was highly prized by the plaintiff. The spoons were lettered on the handle "W. & S. J.," meaning William and Sarah Johnson, father and mother of plaintiff. I mean both the tea and table spoons were so marked. I don't think the forks were so lettered at all, nor the silver pitcher. When the plaintiff was away from the plantation the silver ware was put away in the house and left in charge of one of the trusty female servants to remain untouched until the plaintiff returned. This was not the case with the pitcher, which stood on the sideboard; it was too large to go in the drawer. It would have gone into the sideboard easy enough, but it was considered entirely safe there. On the same morning the United States Army came I had seen the pitcher in the customary place. I can't tell how long it had been before I saw the silver ware in the drawers. The first thing I knew of the silver ware being taken the servant girl came running to
36 me in the yard and said that the soldiers were taking all the silver ware. Capt. Snell made no attempt to search the men or have the silver restored. When Capt. Snell went into the sugar-house the pickets left their posts and the soldiers scattered all over the plantation, mixed up with the negroes, who went about showing them the potatoe-patches and where everything was kept. I have never seen the pitcher, silver ware, or sugar or guns since.

(Signed) TOM I. DECKER.

C. McTHELIN, sworn for plaintiff, in open court declares and says he is over 35 years of age, by occupation a trader, and resides in N. O. I knew plaintiff for 4 years past. I don't know defendant. I was on plaintiff's plantation on 6th of Sept. last, when the steamboat Avery came there. After the boat had landed, they had pickets thrown out all round the yard and house where Mr. Decker lived; immediately after the pickets were thrown out 2 commissioned came to Mr. Decker's house, one a capt. and one a lieut. They asked him if he had charge
37 there; he told them yes, he was manager; they told him they had come there by orders from Gen'l Dow for whatever subsist-

ence they might need; they had been informed that there was sugar there, and that was the principal thing they wanted at present. Mr. Decker remarked to them it was strange that they had come there, as the owner of that plantation had always been a Union man; at the same time he showed them a letter he had rec'd from Mr. Johnson a few days previous. They said if he was a Union man that he could better afford to aid the cause. Mr. Decker said he would as soon sell them the sugar as anybody else. He made answer he did not come there to buy it. Mr. Decker then said, I suppose you will give me a receipt for whatever you take. He answered, no; he was not authorized to receipt, but that he should report to Gen. Dow, and he supposed it would be all right. He then asked Mr. Decker if he would show him where the sugar was. Mr. Decker said yes, and went into the house & got the key of the sugar-house, and told me to watch his house while he was gone with the capt. to the sugar-house. He opened the sugar-house. The next I saw the sugar hogsheads were being rolled out of the sugar-house on the platform, and on the car used for drawing it down to the levee.
38 Negroes and soldiers worked at it. During the time I had remarked negroes and soldiers with sugar in sacks and bags carrying it off to the levee where the steamboat Avery was. I counted twenty-four hogsheads of sugar they had taken and carried to the wharf. During the time that Mr. Decker and the capt. were at the sugar-house, I saw the soldiers & negroes break into the store-room and pantry, and Mr. Johnson's dwelling-house, and saw *and saw* them carry off a quantity of clothing from there. They destroyed and drank and carried away all the milk, butter, and eatables. I saw a pitcher, looking like silver, carried off by a soldier. I saw them go into the orchard and pull and break down the banana and orange trees, and carry off the fruit. They took ducks and chickens, and carried them down to the steamboat. After Mr. Decker came back from the sugar-house, they asked him if he had any arms about the house. He told them, yes; he had two guns and a small pocket pistol, which he showed them; they took them. After that I saw several negroes carrying their dunnage (I mean their bed-clothes, furniture, poultry, &c.,) down to the boat. Mr. Decker asked the
39 officers, when they first came, who had authorized them to come there; they said they came there by orders of Gen. Neal Dow. I did not hear anything said about a written or verbal order. There was no written order produced.

(Signed) C. McTHELIN.

Order, case continued.

Sixth district court.

MONDAY, *March 9th*, 1863.

BRADISH JOHNSON *vs.* NEAL DOW. } No. 10348.

This day, after hearing further evidence, the same was submitted for the confirmation of the judgment by default herein entered, and the case ordered to be continued for further evidence.

Testimony.—Filed March 24, 1863.

Sixth district court.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

Additional evidence to confirm default.

C. E. BLAKE sworn for plaintiffs:

40 I am chaplain of the 13th Maine Regiment, U. S. Army. I'm acquainted with Neal Dow, defendant. Neal Dow came to this part of the country on the 22nd March, 1862. He took command of Forts Jackson & St. Philip on 12th July last; cannot tell how long he remained there, and think he was removed to Pensacola in September last. I know Capt. W. B. Snell, of C. B, 13 Maine Regiment. I'm acquainted with him. I know that an expedition, fitted out at the forts, which went on s'tb't S. Avery, and that Capt. B. Snell was in command of that expedition. I do not know what the orders were of that expedition. I saw at the fort a quantity of sugar, said to have been taken from pl'ff's plantation. I know something of a silver pitcher; that is, that there was a pitcher taken from pl'ff's plantation; but if this is the one I don't know. It was a silver pitcher, I should think; it would hold, maybe, two quarts, from my recollection of it; I am not sure; it was an ornamented pitcher—old pitcher—not of modern style; it had initials on it; the last letter was J.; the others I've forgotten. Don't know the value of that pitcher. I saw this pitcher first at the
41 City Hotel in this city, in possession of one who is now Capt. Brainard, Co. E, 13 Maine Regiment. He wished me to take it to Genl. Dow at the fort. He told me had quite a cruize after the pitcher—finally he found it on the boat, and wished me to take it to the fort to Brig. Gen. Dow. I received it from Capt. Brainard, and delivered it to Genl. Dow. It was the common report at the fort that this sugar came from plaintiff's plantation. I should guess there were twenty hogsheads, more or less; it was very white sugar—what I saw of it was. I've no knowledge if it was all of that kind; don't know that I saw any yellow. I'm acquainted with signature of Capt. Brainard. Being shown a paper, says: I could identify this as his signature. Pl'ff here offers this document in evidence, now filed, marked B C:

Document marked B C offered in evidence by plaintiff.—Filed March 24th, 1863.

Sixth district court.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

FORT ST. PHILIP, LA., *Jan'y 1st*, 1863.

To whom it may concern:

42 I certify that I have received on account of the United States the foll'ing described commissary stores taken from the plantation of Bradish Johnson, Placquemine Parish, and State of Louisiana,

viz: 8,167 pounds white sugar, first quality; 6,740 pounds brown sugar, third quality; making in all fourteen thousand nine hundred and seven pounds. I also certify that I have "taken up" on my "return of provisions" for the month of December, 1862, the above amounts and qualities, by order of Col. O. P. Gooding.

W. A. BRAINARD,
Capt. 13th M'e Vol., A. C. S.

A true copy of the original made by me. N. O. Apr'l 17th, 1863.
(Signed) [SEAL.] WM. BAKER,
D'y Clerk.

Order, case continued.

Sixth district court.

TUESDAY, 24th *March*, 1863.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

43 This day, after hearing additional evidence in support of plaintiff's demand, it is ordered that the case be continued for further evidence.

Testimony.—Filed April 2nd, 1863.

In sixth district court.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

April 2nd. On trial, B. G. BARTON sworn for plaintiff:

I'm in the jewelry business. I'm acquainted with the value of silverware. The price of a fine water pitcher would depend upon its weight; one holding 2 quarts the price would vary from $100 to $150. The silver knives, they would be worth from $75 to $100 a doz.; if desert knives, $50 to $75 a doz.; the silver table spoons would come from $60 to $80 a doz.; silver teaspoons about $18 to $30 a doz. Plated fish knives would be worth about $5, and if silver $18 to $30. It depends upon the weight and manufacture.

E. W. RODD. In the sugar business & well acquainted with
44 the market price. I know what kind of sugar is made on plaintiff's plantation; white refined sugar such as he made about the 6th Sept., 1862, was worth from 11¾ to 12 cts. a pound; the yellow sugar such as he made at the time, was worth from 8¾ to 9½ cts. The size of the hogshead, the' would weigh from 1,200 to 1,300; 1,200 is about the average.

Order, case submitted.

Sixth district court.

THURSDAY, *April 2nd*, 1863.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

This case was submitted to the court this day after hearing further evidence in support of plaintiff's demand.

Judgment.

Sixth district court.

BRADISH JOHNSON
vs
NEAL DOW. } No. 10348.

Judgment entered April 4th, 1863.

In this case the court considering that the evidence sustains plaintiff's claim to the amount of $1,454.81, and that defendant was personally cited, it is adjudged and decreed that there be judgment in favor of the plaintiff, Bradish Johnson, and against the defendant, Neal Dow, for said sum of fourteen hundred and fifty-four $\frac{81}{100}$ dollars, with legal interest from judicial demand and costs of suit.

45

Judgment signed April 9th, 1863.

(Signed) R. R. HOWELL,
Judge.

Sheriff's return on copy of judgment.

Received April 11th, 1863. After diligent search and enquiry made, Neal Dow, the defendant herein, could not be found. Returned June 11th, 1863.

(Signed) M. DE COURSEY,
Dy Sheriff.

Certificates.

STATE OF LOUISIANA,
Sixth District Court of New Orleans:

I, William Woelper, clerk of the sixth district court of New Orleans, do hereby certify that the above and foregoing twenty-five pages do contain a full and complete transcript of the record of the case wherein Bradish Johnson is plaintiff and Neal Dow is defendant instituted in this court and now on the records under the number 10384, and of all judicial proceedings had therein.

46

In testimony whereof I have hereunto fixed the seal of the said court, at the city of New Orleans, on this thirteenth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-second year of the Independence of the United States of America.

[SEAL.] WM. WOELPER,
Clerk.

I, Guy Duplantier, sole judge of the sixth district court of New Orleans, do hereby certify that William Woelper is clerk of the said court, and that the signature, William Woelper, to the foregoing certificate is in the proper handwriting of him the said clerk, to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand and seal, at the city of New Orleans, on this thirteenth day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] G. DUPLANTIER,
Judge.

47 I, William Woelper, clerk of the sixth district court of New Orleans, do hereby certify that the honorable Guy Duplantier, whose name is signed to the foregoing certificate, is the sole judge of this court, and that he is duly commissioned and qualified; and I do further certify that said court is a court of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this thirteenth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and in the ninety-second year of the Independence of the United States of America.

[SEAL.] WM. WOELPER,
Clerk.

48 *Charges in the suit.*

6th district court of New Orleans.

BRADISH JOHNSON
vs.
NEAL DOW. } No. 10348.

1863.				
Jan'y	27.	Filing petition		10
"	"	Copy served and 2 cit	2	50
"	29.	Filing detailed bill		10
Feb.	17.	Default		30
"	24.	1 subp		40
"	"	Filing testimony & taking affi'd		35
"	"	Hearing & cont'g case		50
March	9.	Testimony	3	10
"	"	Hearing case & cont'g		50
"	24.	Testimony & one doc	1	70
"	"	Hearing & cont'd		50
April	2.	Taking & filing testimony	1	10
"	"	Hearing & submitting case		50
"	"	Judgment & copy to seize	1	50
		Judicial record	2	50
		Crier	1	00
"	17.	Judgment & copy to serve	1	50
June	11.	Filing ret. on same		10
			$18	15
		1864, August, cash	18	15

G. H. JOHNSON,
M. R.

49 STATE OF LOUISIANA,
Parish of Orleans:

I, Jos. G. Baum, clerk of the sixth district court of New Orleans, duly commissioned and sworn as such, do hereby certify that the above and foregoing bill contains a true and correct items of charges, in the case of which Bradish Johnson is plaintiff and Neal Dow is defendant, being under the number 10348 on the docket of said sixth district court of New Orleans.

In witness whereof I hereunto sign my name and affix the seal of said

Grant that, and it follows that the demurrer of the defendant to the replication of the plaintiff must be overruled, and that the plaintiff is entitled to judgment for the amount of the judgment set forth in the declaration with lawful interest to the date of the present judgment.

Demurrer to the replication of the plaintiff overruled and the three special pleas of the defendant adjudged bad.

Judgment in favor of the plaintiff for twenty-six hundred and fifty-nine dollars and six-seven cents ($2,659.67) debt; and costs of suit taxed at one hundred and forty-one and sixty-six cents ($141.66).

Attest:

A. H. DAVIS,
Clerk U. S. C. C.

56 *Bond.*

Know all men by these presents that we, Neal Dow, as principal, and William Hammond and William E. Gould, as sureties, all of Portland, in the county of Cumberland and State of Maine, are holden and firmly bound and obliged unto Bradish Johnson, of the State of New York, in the sum of five thousand dollars, to be paid to the said Bradish Johnson, his executors, administrators, or assigns, to which payment, well and truly to be made, we jointly and severally bind ourselves and each of us, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the twenty-first day of September, in the year of our Lord one thousand eight hundred and seventy-six.

The condition of the above obligation is such that whereas the said Neal Dow has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the suit of Bradish Johnson versus Neal Dow by the circuit court of the United States for the district of Maine: Now, therefore, if the above named Neal Dow shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise shall remain in full force and effect.

NEAL DOW. [SEAL.]
WILLIAM HAMMOND. [SEAL.]
WILLIAM E. GOULD. [SEAL.]

Signed, sealed, and delivered in presence of—
NATHAN WEBB.

SEPTEMBER 22, 1876.

Approved.

NATHAN CLIFFORD,
Associate Justice of the Sup. Court U. S.

A true copy of the original on file.

A. H. DAVIS, *Clerk.*

57 UNITED STATES OF AMERICA,
District of Maine, ss:

I, Abner H. Davis, clerk of the circuit court in said district, hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Bradish Johnson, plaintiff, vs. Neal Dow, defendant, in said court determined.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Portland, in said district, this twenty first day of September, and of the Independence of the United States of America the one hundred and first.

ABNER H. DAVIS, *Clerk.*

58 The United States of America to Bradish Johnson, a citizen of the State of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the first circuit and district aforesaid, wherein Neal Dow, of Portland, Maine, is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this twenty second day of September, in the year of our Lord one thousand eight hundred and seventy-six.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

PORTLAND, *September* 21, 1876.

Due service of the within made upon us this day.

BRADBURY & BRADBURY,
Attorneys for Bradish Johnson.

(Indorsed:) Citation.

(Indorsement on cover:) No. 299. Neal Dow, plaintiff in error, vs. Bradish Johnson. Maine C. C. U. S. Filed 1st November, 1876.

ADDITION TO RECORD 76.

1 Supreme court of the United States, September 9, A. D. 1879.

BRADISH JOHNSON
v.
NEAL DOW.

Pending this case in the circuit court the following papers, to wit, statement of George F. Shepley, marked A; statement of R. K. Howell, marked B; General Order No. 100, marked C, were, by stipulation filed in the above case, agreed to be used as evidence, without other proof, if the substance thereof was competent, and in making up the record to be sent to the Supreme Court under the writ of error they were inadvertently omitted, and the record should be perfected by their insertion.

And we agree that the statement of George F. Shepley and R. K. Howell, marked A & B, may be printed by the clerk of the Supreme Court with and as a part of the record of the case, and the printed copy of General Order No. 100, marked C, may be filed in the case, to be referred to by either party, without being printed with the rest of the case.

And we agree that they may be printed by the clerk of the
2 Supreme Court with and as a part of the record of case.

It is further stipulated that the clerk of the circuit court (Maine district) may verify the copies of the papers and this stipulation, above specified, and forward the same to the clerk of the Supreme Court as a part of the record.

JOSIAH H DRUMMOND,
Att'y for Neal Dow.
BION BRADBURY,
Att'y for Bradish Johnson.

This stipulation has been duly filed in the circuit court of the United States for Maine district.

Attest:

I. H. DAVIS,
Clerk C. C. U. S., Maine District.

(Endorsed:) Supreme Court United States, 1879. Bradish Johnson v. Neal Dow. Stipulation between counsel in the case.

A.

Having been commissioned by the President of the United States, in July, 1862, as military governor of the State of Louisiana, with
3 power, among other things, "to establish all necessary courts and tribunals," I decided prior to October, 1862, to re-establish and reorganize the second, third, and sixth district courts of New Orleans, in the parish and city of New Orleans, with the same powers and jurisdictions appertaining to those courts prior to the rebellion. Accordingly the necessary judicial and executive officers, judges, sheriffs,

and clerks were commissioned, and the courts fully organized by me, prior to October 13th, 1862.

On the 13th of October, 1862, the following order was issued, taking away from the provost judges, and restoring to these courts, the jurisdiction of civil causes between party and party, and in matters of succession of estates of deceased persons, such as had been formerly exercised by them:

General Orders, No. 13.

STATE OF LOUISIANA, EXECUTIVE DEPT.,
New Orleans, October 13th, 1862.

The second, third, and sixth district courts, in the parish and
4 city of New Orleans, having been organized by the authorities of the United States, and having jurisdiction of the causes hereinafter mentioned, the provost judges in said parish will not hereafter take cognizance of or hear and determine any process or proceeding in matters of succession of deceased persons, or any civil causes between party and party, and not involving any question of a political or military character.

By order of Brig. Gen. G. F. Shepley, military governor of Louisiana.

JAMES F. MILLER,
Assistant Adjutant-General.

After the publication of this order the courts before mentioned continued to exercise jurisdiction in civil causes between party and party, according to their previously existing jurisdiction under the laws of Louisiana, excepting so far as they had been modified by military orders of the general commanding the department or the mili-
5 tary governor of Louisiana.

G. F. SHEPLEY.

PORTLAND, MAINE, *Sept.* 28, 1868.

I hereby certify that the foregoing is a true copy of the statement of George F. Shepley, marked A, referred to in the stipulation of Sept. 9, A. D. 1879, entered into between the counsel in the case of Bradish Johnson v. Neal Dow, which statement was filed in said case in the United States circuit court for Maine district, April T., A. D. 1874.

Attest:
[SEAL.]

I. H. DAVIS,
Clerk C. C. U. S., Maine District.

B.

Statement of Hon. R. K. Howell, judge of the 6th district court of New Orleans, Louisiana.

The sixth district court of New Orleans was organized by statute
6 in 1853, with general civil jurisdiction throughout the parish of Orleans, and at the date of the passage of the ordinance of secession (January 26, 1861), was in existence under the laws of the State of Louisiana, and was presided over by Hon. R. K. Howell, who was elected judge of said court on the first Monday of April, A. D. 1857, for the term of four years, and on the first Monday of April, 1861, re-elected to said office, and duly qualified.

There was then, as there is now, an annual term from first week in November to the 3d day of July following, for hearing and deciding causes, but for granting interlocutory orders the court was open all the year.

Upon the arrival at New Orleans of the naval and military forces of the United States, near the end of April, 1862, the 6th district court of New Orleans was in full exercise of its powers.

7 Under proclamation, or Order No. 1, of 1st May, 1862, by Gen. Butler, said court was kept open without any change in its personnel, the judge and clerk being in attendance from day to day, as business (but little) demanded. On the 14th June, 1862, the judge took the oath to support the Constitution of the United States, as required by Gen. Butler's Orders No. 41, and continued acting with the knowledge of the military authority as judge of the sixth district court of New Orleans under the laws of the State of Louisiana, so far as not modified by military orders, until in March, 1864, when he was transferred to the second district (the probate) court of New Orleans, & Judge Gay Duplantier was appointed to the sixth district court by Gov. Hahn.

The clerk of the sixth district court, Isaac N. Phillips, failed to comply with Orders No. 41, and during the summer vacation of 1862, beginning 4th July, his deputy remained in charge of the office

8 until, in September, Gov. Shepley appointed William Duncan the clerk, and the court was regularly opened according to law on the first Monday of November, 1862, and has ever since held its regular annual terms.

The sixth district court of New Orleans was never abolished or suspended by any military or other order or power, but has always, from its creation in 1853, been kept open for business as provided by law.

There was no military order establishing it, nor one specially recognizing it, further than orders addressed to the judge relative to business and cases before it, and orders from the military governor applying to the courts in the city. That is to say, there was no special order declaring that the 6th district court of New Orleans was recognized by the military authority; but the existence of the court and the author-

9 ity of the presiding judge were definitely recognized by the military, and orders were sometimes sent and addressed to the said judge as such from military headquarters in relation to particular causes and to matters of jurisdiction, the court always being recognized as having general civil jurisdiction and legal authority to hear and decide causes according to existing laws, subject to modification by the paramount military authority. It was never actually suspended in its legal operations, and none of its regular terms were omitted. Its clerk was changed, as above stated, by Gov. Shepley in the fall of 1862, and the judge by Gov. Hahn in M'ch, 1864, as above. Upon Judge Howell's taking the oath, as required by Gen. Butler, in June, 1862, the court continued in the exercise of all its powers the same as before the rebellion, and was the only court in New Orleans which was so con-

10 tinued. In the fall of 1862 Gov. Shepley appointed judges for the first, second, and third district courts of New Orleans, who, with Judge Howell as judge of the sixth district court, exercised judicial power in the parish of Orleans, as contemplated by the laws of the State on the subject.

General O rders No. 13.

STATE OF LOUISIANA, EXECUTIVE DEP'T,
New Orleans, Oct. 13th, 1862.

The second, third, and sixth district courts in the parish and city of New Orleans having been organized by the authorities of the United States, and having jurisdiction of causes hereinafter mentioned, the parish judges in said parish will not hereafter take cognizance of or hear and determine any process or proceeding in matters of succession of estates of deceased persons, or any civil causes between party and party and not involving any question of a political or military character.

11 By order of Brig. Gen. G. F. Shepley, military governor of Louisiana.

JAMES F. MILLER,
Assistant Adj. General.

I hereby certify that this is a true copy of the statement of R. K. Howell, marked B, referred to in the stipulation of Sept. 9, A. D. 1879, entered into between the counsel in the case of Bradish Johnson v. Neal Dow, which statement was filed in said case in the United States circuit court for Maine district, April T., A. D. 1874.

Attest:
[SEAL.]

I. H. DAVIS,
Clerk C. C. U. S., Maine District.

(Endorsed:) Supreme Court U. S. 1879, October term. No. 76. Neal Dow, plff. in error, vs. Bradish Johnson. Stipulation of counsel & addition to record. Filed 16th September, 1879.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

NEAL DOW
v.
BRADISH JOHNSON. } No. 76.

ERROR TO UNITED STATES CIRCUIT COURT FOR MAINE.

PLAINTIFF'S BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

NEAL DOW
v.
BRADISH JOHNSON. } No. 76.

ERROR TO UNITED STATES CIRCUIT COURT FOR MAINE.

PLAINTIFF'S BRIEF.

STATEMENT.

In 1853 the legislature of Louisiana erected a tribunal known as the sixth district court of New Orleans.

The jurisdiction of the several district courts in that city are defined in the Revision of 1856, pages 286 to 288, sections 62 to 75:

SEC. 62. There shall be six district courts in the parish and city of New Orleans, which shall be designated as follows: First, second, third, fourth, fifth, and sixth district courts of New Orleans.

SEC. 63. For each of said courts one judge shall be elected on the first Monday of April, 1857, and every four years thereafter. * * *

To the honorable the sixth district court of New Orleans:

The petition of Bradish Johnson, a citizen of the State of New York and of the United States of America, respectfully shows:

That Neal Dow, who resides in the State of Maine, is justly indebted to petitioner in the full sum of sixteen hundred and eleven dollars and twenty-nine cents, with interest from judicial demand, for this, to wit;

That petitioner is now, and has been for several years past, the owner of a plantation and slaves in the parish of Plaquemines, Louisiana, on the left bank, ascending, of the Mississippi River, and about forty-three miles from New Orleans. That on the 6th September, 1862, during the temporary absence of petitioner from his plantation, the steamer Avery, in charge of Capt. W. B. Snell, Company B, Thirteenth Maine Regiment, with a force under his command, stopped and landed at said plantation and took therefrom 12 (twelve) hogsheads Woodland refined sugar, 12 (twelve) hogsheads brown sugar, and one other hogshead of Woodland refined sugar, making in all twenty-five hogsheads sugar; and that the said force under the command aforesaid plundered the dwelling-house of said plantation, which house and contents was likewise the private property of the petitioner, and took therefrom one silver pitcher, a half-dozen silver knives, a half-dozen silver spoons, one fish-knife, a half-dozen silver teaspoons, and other articles which cannot be specified at the present time, but which petitioner reserves to himself the right to claim in these proceedings.

That these illegal, wanton, oppressive, and unjustifiable acts and doings of Captain Snell and the officers and soldiers under his command were perpetrated under a verbal and secret order of Neal Dow, who was then a brigadier-general in the service of the United States, and then in command of Forts Jackson and St. Philip, and who, by his secret orders, unauthorized by his superiors or by any provision of martial law, or by any requirements of necessity growing out of a state of war, wantonly abused his power and inflicted upon petitioner the

wrongs which he herein complains of, and for the reparation of which the laws of the United States and of this State hold him personally responsible.

Petitioner annexes a full and detailed list of the articles and their present value (a portion of the sugar taken having been recovered), amounting to sixteen hundred and eleven dollars and twenty-nine cents.

Wherefore petitioner prays that Neal Dow be cited to appear and answer this petition, and, after due proceedings, be condemned to pay petitioner the sum of sixteen hundred and eleven dollars and twenty-nine cents, with interest, costs, and general relief.

DURANT AND HORNER,
Attorneys for Petitioner.

(Record, 11, 12.)

General Dow did not appear to answer, but was defaulted. (Record, 13, middle.) After hearing the testimony found in the record (pp. 13 to 19), showing that the sugar, &c., taken from Mr. Johnson's plantation was seized by a military detachment sent by General Dow for that purpose, and the value of the articles, judgment was rendered therefor in the sum of $1,454.81, "with legal interest from judicial demand and costs of suit." Judgment signed April 9, 1863. (Record, 20, top.)

Upon the 30th day of March, 1866, Mr. Johnson brought suit against General Dow in the United States circuit court for the Maine district, upon this judgment. (Record, 2, 3.)

The defendant below pleaded the general issue (nul tiel record) and three special pleas, as follows:

And for further plea in this behalf, by leave of court here for this purpose first had and obtained, the defendant says that the plaintiff ought not to have and maintain his action aforesaid against said defendant, because, he says, that long before said ninth day of April, A. D. 1863, to wit, on the first day of January, A. D. 1860, he was and ever since has been a citizen of the State of

To the honorable the sixth district court of New Orleans:

The petition of Bradish Johnson, a citizen of the State of New York and of the United States of America, respectfully shows:

That Neal Dow, who resides in the State of Maine, is justly indebted to petitioner in the full sum of sixteen hundred and eleven dollars and twenty-nine cents, with interest from judicial demand, for this, to wit;

That petitioner is now, and has been for several years past, the owner of a plantation and slaves in the parish of Plaquemines, Louisiana, on the left bank, ascending, of the Mississippi River, and about forty-three miles from New Orleans. That on the 6th September, 1862, during the temporary absence of petitioner from his plantation, the steamer Avery, in charge of Capt. W. B. Snell, Company B, Thirteenth Maine Regiment, with a force under his command, stopped and landed at said plantation and took therefrom 12 (twelve) hogsheads Woodland refined sugar, 12 (twelve) hogsheads brown sugar, and one other hogshead of Woodland refined sugar, making in all twenty-five hogsheads sugar; and that the said force under the command aforesaid plundered the dwelling-house of said plantation, which house and contents was likewise the private property of the petitioner, and took therefrom one silver pitcher, a half-dozen silver knives, a half-dozen silver spoons, one fish-knife, a half-dozen silver teaspoons, and other articles which cannot be specified at the present time, but which petitioner reserves to himself the right to claim in these proceedings.

That these illegal, wanton, oppressive, and unjustifiable acts and doings of Captain Snell and the officers and soldiers under his command were perpetrated under a verbal and secret order of Neal Dow, who was then a brigadier-general in the service of the United States, and then in command of Forts Jackson and St. Philip, and who, by his secret orders, unauthorized by his superiors or by any provision of martial law, or by any requirements of necessity growing out of a state of war, wantonly abused his power and inflicted upon petitioner the

wrongs which he herein complains of, and for the reparation of which the laws of the United States and of this State hold him personally responsible.

Petitioner annexes a full and detailed list of the articles and their present value (a portion of the sugar taken having been recovered), amounting to sixteen hundred and eleven dollars and twenty-nine cents.

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Attorneys for Petitioner.

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Upon the 30th day of March, 1866, Mr. Johnson brought suit against General Dow in the United States circuit court for the Maine district, upon this judgment. (Record, 2, 3.)

The defendant below pleaded the general issue (nul tiel record) and three special pleas, as follows:

And for further plea in this behalf, by leave of court here for this purpose first had and obtained, the defendant says that the plaintiff ought not to have and maintain his action aforesaid against said defendant, because, he says, that long before said ninth day of April, A. D. 1863, to wit, on the first day of January, A. D. 1860, he was and ever since has been a citizen of the State of

Maine, and that long before the ninth day of April, A. D. 1863, to wit, on the twenty-sixth day of January, A. D. 1861, an ordinance of secession was duly passed by the legislature of said State of Louisiana, and approved by the governor thereof, and afterwards, to wit, on the first day of February, A. D. 1861, was submitted to and adopted by the people of said State in words and figures following, to wit:

"We, the people of the State of Louisiana, in convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance passed by the State, Nov. 22, 1807, whereby the Constitution of the United States of America and the amendments of said Constitution were adopted, and all the laws and ordinances by which Louisiana became a member of the Federal Union, be, and the same are hereby, repealed and abrogated, and the union now subsisting between Louisiana and the other States, under the name of the United States of America, is hereby dissolved.

"We further declare and ordain that the State of Louisiana hereby resumes the rights and powers heretofore delegated to the Government of the United States of America, and its citizens are absolved from allegiance to said government, and she is in full possession of all the rights and sovereignty that appertains to a free and independent State."

Whereby said State seceded from the Government of the United States, and on the same day established a government independent of the Government of the United States, and continued to maintain the same until long after the ninth day of April aforesaid. And that said State and the inhabitants thereof, from said twenty-sixth day of January, A. D. 1861, until said ninth day of April, and long afterwards, were in rebellion against the Government of the United States, and levying and carrying on war against said government in order to uphold and maintain their own independent government aforesaid; and that in consequence thereof, long before said ninth day of April, A. D. 1863, the military force of the United States, engaged in suppressing

said rebellion by order of the President of the United States, took forcible possession of all that part of the State of Louisiana comprising the district of the sixth district court of New Orleans aforesaid, and held military occupation thereof until long after said ninth day of April, A. D. 1863, and martial law was then and there and during all that time established and in force; by reason of all which the said sixth district court of New Orleans ceased to have lawful jurisdiction between parties and concerning causes of action therein, and on said ninth day of April, A. D. 1863, had no jurisdiction to render the judgment described in the declaration in favor of said plaintiff against this defendant. All which he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his action aforesaid against said defendant, and for his costs.

By JOSIAH H. DRUMMOND &
NATHAN WEBB,
His Attorneys.

And for further plea in this behalf, by leave of court here for this purpose first had and obtained, the defendant says that the plaintiff ought not to have and obtain his action aforesaid against said defendant, because he says that long before said ninth day of April, A. D. 1863, to wit, on the first day of January, A. D. 1860, he was and ever since had been a citizen of the State of Maine, and that long before the ninth day of April, A. D. 1863, to wit, on the twenty-sixth day of January, A. D. 1861, an ordinance of secession was duly passed by the legislature of said State of Louisiana and approved by the governor thereof, and afterwards, to wit, on the first day of February, A. D. 1861, was submitted to and adopted by the people of said State, in the words and figures following, to wit:

"We, the people of the State of Louisiana, in convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance passed of the State November 22, 1807, whereby the Constitution of the United States of America, and the amendments of

said Constitution were adopted, and all the laws and ordinances by which Louisiana became a member of the Federal Union, be, and the same are hereby, repealed and abrogated, and the union now subsisting between Louisiana and the other States, under the name of the United States of America, is hereby dissolved.

"We further declare and ordain that the State of Louisiana hereby resumes the rights and powers heretofore delegated to the Government of the United States of America, and its citizens are absolved from allegiance to said government, and she is in full possession of all the rights and sovereignty that appertains to a free and independent State."

Whereby said State seceded from the Government of the United States, and on the same day established a government independent of the Government of the United States, and continued to maintain the same until long after the ninth day of April aforesaid; and that said State and the inhabitants thereof, from said twenty-sixth day of January, A. D. 1861, until said ninth day of April, and long afterwards, were in rebellion against the Government of the United States, and levying and carrying on war against said government in order to uphold and maintain their own independent government aforesaid; and that in consequence thereof long before said ninth day of April, A. D. 1863, the military force of the United States engaged in suppressing said rebellion by order of the President of the United States, took forcible possession of all that part of the State of Louisiana comprising the district of said sixth district court of New Orleans aforesaid, and held military occupation thereof until long after said ninth day of April, A. D. 1863, and martial law was then and there and during all that time established and in force; that the defendant was, on the first day of May, A. D. 1862, and until long after the ninth day of April, A. D. 1863, in the military service of the United States, duly commissioned by the President thereof as brigadier-general, and was there and then acting under the orders of the President of the United States according to the laws thereof and the articles of

war, and especially under the General Order No. 109, dated the twenty-second day of July, A. D. 1862, and issued the sixteenth day of August, A. D. 1862, which was in the words and figures following, to wit:

[General Orders No. 109.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, August 16, 1862.

The following is an order of the President of the United States, dated July 22, 1862:

First. Ordered, That military commanders within the States of Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas in an orderly manner, seize and use any property, real or personal, which may be necessary or convenient for their several commands as supplies, or for other military purposes, and that while property may be destroyed for proper military objects, none shall be destroyed in wantonness or malice.

Second. That military and naval commanders shall employ as laborers within and from said States so many persons of African descent as can be advantageously used for military and naval purpose, giving them reasonable wages for their labor.

Third. That as to both property and persons of *of* African descent, accounts shall be kept sufficiently accurate and in detail to show quantities and amounts, and from whom both property and such persons shall have come, as a basis upon which compensation can be made in proper cases; and the several departments of this government shall attend to and perform their appropriate parts towards the execution of these orders.

By order of the Secretary of War.

E. D. TOWNSEND,
Assistant Adjutant-General.

And he further avers that, acting in the performance of his duty as brigadier-general aforesaid, he was in

command of the troops of the United States in said State of Louisiana; and said body of troops, by command of this department, under the authority aforesaid, seized from the plaintiff, then a citizen of said State of Louisiana, certain chattels necessary and convenient for supplies for the Army of the United States and for other military purposes: and said plaintiff, on account of the seizure of said chattels as aforesaid, commenced an action in said sixth district court of New Orleans after the taking and seizing aforesaid; and he further says that said plaintiff prosecuted his action, and said court proceeded on said ninth day of October to render therein the judgment against the defendant declared on the plaintiff's writ; but he says that said sixth district court, for the reasons aforesaid, had no jurisdiction of said action or over this defendant at the time of the commencement thereof, or at any time since, or at the time of the rendition of said judgment. All which he is ready to verify.

Wherefore he prays judgment if the plaintiff his aforesaid action ought to have or maintain, and for his costs.

By JOSIAH H. DRUMMOND &
NATHAN WEBB,
His Attorneys.

And for a further plea in this behalf, by leave of court first had and obtained, the defendant says that the plaintiff his aforesaid action thereof against him ought not have and maintain, because he says that long before said ninth day of April, A. D. 1863, and long before the alleged trespasses in the supposed record of said "sixth district court of New Orleans, in the State of Louisiana," mentioned, to wit, on the first day of May, A. D. 1861, the people of said State of Louisiana were in rebellion against the government, and had wholly subverted and overthrown the authority of said government in the State of Louisiana, and continued to levy war against the United States until long after said ninth day of April, A. D. 1863; that the Government of the United States from said first day of May, A. D.

1861, until long after said ninth day of April, A. D. 1863, was engaged in suppressing said rebellion and restoring its own proper authority, and for that purpose maintained a military force of the United States in said State of Louisiana during all said time, which military force during all said time was engaged in actual warfare with the people of Louisiana, their aiders and abettors; and for the purpose of suppressing the rebellion aforesaid and restoring the authority of the Government of the United States, the said government, by its proper officers, declared and maintained martial-law in said State of Louisiana from said first day of May, A. D. 1861, till said ninth day of April, A. D. 1863, and long afterwards, and deprived all the courts in said State of Louisiana, including said sixth district court of New Orleans, of all jurisdiction, except such jurisdiction as should be conferred upon them by authority of the officer of the Army commanding the forces of the United States in said State of Louisiana; that no jurisdiction over persons in the military service of the United States for acts performed in the line of their duty was by such authority conferred upon said sixth district court of New Orleans.

And said court, between said first day of May, A. D. 1861, and said ninth day of April, A. D. 1863, and on said ninth day of April, had no jurisdiction over any person engaged in the military service of the United States, and under command of the officer commanding the forces of the United States in said State of Louisiana, And for acts done in the line of duty in said service.

And this defendant, on the first day of May, A. D. 1862, then and ever since a citizen of Maine, being then and there commissioned as brigadier-general by the President of the United States, and he continued in said service as brigadier-general as aforesaid, in said State of Louisiana, from said first day of May, A. D. 1862, until said ninth day of April, A. D. 1863, and long afterwards, under the orders of the President of the United States and the general commanding the forces of the United States in said State, and long before and at the time of

the commencement of the proceedings in said sixth district court of New Orleans, and during their pending and at the time of the rendition of said judgment was in said service, acting under the orders of his superior officers of said forces of the United States in suppressing said rebellion and in restoring the authority of the Government of the United States in said State. And he further avers that, acting in the performance of his duty as brigadier-general aforesaid, and in obedience to the lawful commands of his superiors, he was, on the day when the trespasses in said record mentioned are alleged to have been committed, in command of a body of troops of the United States in said State of Louisiana. And said body of troops, by command of this defendant, then and there seized from the plaintiff, then a citizen of said State of Louisiana, certain chattels necessary and convenient for supplies for the Army of the United States and for other military purposes.

And said plaintiff, on account of the seizure of said chattels as aforesaid, commenced an action in said sixth district court of New Orleans for the taking and seizing aforesaid.

And he further says that said plaintiff prosecuted his action, and said court proceeded, on said ninth day of April, to render the judgment against the defendant declared on in the plaintiff's writ; but he says that said sixth district court, for the reasons aforesaid, had no jurisdiction of said action or over this defendant at the time of the commencement thereof, or at any time since, or at the time of the rendition of said judgment. All which he is ready to verify.

Wherefore he prays judgment if the plaintiff his action thereof against him ought to have and maintain, and for costs.

By JOSIAH H. DRUMMOND &
NATHAN WEBB,
His Attorneys.

(Record, 5 to 9.)

To the first plea (nul tiel record) the plaintiff replied, that there was such a record remaining in said district

court, whereof he prayed inspection. (Record, 10.) To the second, third, and fourth pleas, above recited in full, he replied that the said district court, "at the time", &c., "had lawful jurisdiction over and between parties and concerning causes of action within said district, and on said ninth day of April, 1863, had jurisdiction to render the judgment set forth and described in the declaration aforesaid in favor of said plaintiff and against said defendant; and this he prays may be inquired of by the country." (*Ib.*)

To this last replication (to his special pleas) the defendant (Dow) demurred. (Record, 11.) The plaintiff, protesting the demurrer to be irregular and illegal, and that it ought not to be received, said his said replication was good and sufficient, concluding with a verification, and praying judgment. (*Ib.*)

In this stage and state of the case the judges divided in opinion thereon, and sent up to this court this certificate of division:

Debt on judgment recorded in the sixth district court of New Orleans on the ninth of April, 1863.

Date of writ in this court is March 30, 1866. Service was made, and the defendant appeared and pleaded nul tiel record. Three special pleas are also pleaded by the defendant, as follows:

1. That the court which rendered the judgment had no jurisdiction of the case, for the reasons set forth in the plea.

2. That the court which rendered the judgment had no jurisdiction of the case, for the reasons therein fully set forth.

3. That the court which rendered the judgment had no jurisdiction to render the same, for the reasons specifically set forth in the plea.

To the first plea the plaintiff replied that there is such a record. He also filed a replication to the second, third, and fourth pleas, called above one, two, and three special pleas, to the effect that he ought not to be precluded from maintaining his action, because he says that at the time of the commencement of the action, and during the pendency of the same, and on the day the judgment was rendered, the court which rendered the judgment had lawful jurisdiction over and between the parties and concerning the said causes of action within the district, and had jurisdiction to render the judgment set forth and described in the declaration. Instead of joining the issue tendered in the replication the defendant demurred to the same, and the cause is submitted to the court upon the issue of nul tiel record and the demurrer of the defendant to the replication of the plaintiff in response to the three special pleas filed by the defendant.

Under the firstplea, the paintiff having introduced the record, the finding of the court is in his favor, that there is such a record as that set forth and described in the declaration.

Two questions also arise under the demurrer filed by the defendant to the replication of the plaintiff filed to the t'ree special pleas pleaded by the defendant. Those questions are:

1. Whether the replication is a good and sufficient reply to the three special pleas pleaded by the defendant.

2. Whether the said sixth district court at the time and place aforesaid had jurisdiction of the parties and the cause of action to render the judgment described in the present declaration.

Both those questions have been fully argued before the associate justice of the Supreme Court allotted to this circuit, and the district judge for the district of New Hampshire, duly appointed to hold the circuit court for this district during the residue of the present term, and the opinion of the said judges in respect to said questions and each of them being opposed, the two points upon which they disagree are hereby stated by the said

judges during the same term, at the request of the defendant, the two points of difference being as follows:

1. Whether the replication of the plaintiff is a good and sufficient reply to three special pleas pleaded by the defendant.

2. Whether the said sixth district court at the time and place aforesaid had jurisdiction of the parties and the cause of action to render the judgment described in the declaration.

Consequently the said judges hereby state the said questions and certify the same, and direct that the certificate hereof be entered of record.

Record, 22, 23.)

Whenever such a difference occurs, the act of Congress provides that the opinion of the presiding justice shall prevail and be considered the opinion of the court for the time being. (Rev. Stat., sec. 650, p. 117; sec. 652, p. 118.)

Pursuant to that requirement, the presiding justice proceeds to state that he is of the opinion as follows:

1. That the replication of the plaintiff is a good and sufficient reply to the three special pleas pleaded by the defendant.

2. That the said sixth district court of New Orleans did, at the time and place aforesaid, have jurisdiction of the parties and the cause of action to render the judgment set forth and described in the declaration.

Grant that, and it follows that the demurrer of the defendant to the replication of the plaintiff must be overruled, and that the plaintiff is entitled to judgment for the amount of the judgment set forth in the declaration, with lawful interest to the date of the present judgment.

Demurrer to the replication of the plaintiff overruled and the three special pleas of the defendant adjudged bad.

Judgment in favor of the plaintiff for twenty-six hundred and fifty-nine dollars and sixty-seven cents

($2,659.67) debt, and costs of suit, taxed at one hundred and forty-one dollars and sixty-six cents ($141.66).
(Record, 23, 24.)

ASSIGNMENT OF ERRORS.

1. The plaintiff in error assigns for error the finding of the court upon the first plea by him filed in this case, "that there is such a record as that set forth and described in the declaration." (Record, 23, folio 52.)

2. The finding of the court, through the presiding justice, "that the replication of the plaintiff is a good and sufficient reply to the three special pleas pleaded by the defendant." (Record, 23, bottom.)

3. The finding of the court, by the opinion of the presiding justice thereof, "that the said sixth district court of New Orleans did, at the time and place aforesaid, have jurisdiction of the parties and the cause of action to render the judgment set forth and described in the declaration." (*Ibid.*)

4. The rendition of judgment against him in this case. (Record, 24, top.)

5. Judgment should have been rendered in favor of said Dow.

BRIEF.

I.

"Under the first plea, the plaintiff having introduced the record, the finding of the court is in his favor, that there is such a record as that set forth and described in the declaration." (Record, 23, folio 52.)

This finding we assign as error. (See *supra*.)

1. To our view, the fundamental point in this connection, upon which we are at issue with the defendant in error (see his brief, 10), is whether or not "the same rules and principles are applicable to this case as to cases arising under a war with a foreign power."

We maintain the affirmative and he the negative of this proposition.

To support our position we need only cite repeated decisions of this court. (Prize Cases, 2 Black, 636.)

"That the late rebellion, when it assumed the character of civil war, was attended by the general incidents of a regular war, has been so frequently declared here that nothing further need be said on that point." (The Grapeshot, 9 Wallace, 132, middle.)

"The government was not shorn of *any* of those rights that belong to belligerency." (Miller *v.* United States, 11 Wallace, 306, near bottom.)

It "had *all* the powers of the most favored belligerent." (Lamar *v.* Brown, 92 U. S., 195, in second paragraph from the bottom.

A *status* of war still existed in New Orleans and vicin-

ity at the time these proceedings were had. (Same case last cited, 92 U. S., 193.)

2. In the trial of the issue upon this plea (nul tiel record) the court, in its inspection, does not simply consider the phraseology in which the supposed record is couched and the technical accuracy of its statements and certificates, but applies to the question all those facts of which the court takes judicial cognizance, exercising judgment,—judicial power,—and not mere mechanical supervision in the matter of clerical correctness.

The principal fact of that nature having a bearing upon the document produced and relied upon by Mr. Johnson as a record, was the existence of war and of martial law in New Orleans at the time those matters occurred which are therein detailed; and that General Dow was then and there in the military service of the United States.

Judicial cognizance should be taken and applied of the fact that all the courts of New Orleans at that time depended for their existence and jurisdiction upon the delegation or assent of the dominant military authority. (Handlin *v.* Wickliffe, 12 Wallace, 173.)

If the court would not judicially notice the orders and proclamations of Generals Butler and Shepley, then the record is defective in not showing affirmatively that the sixth district court was authorized by the power then and there supreme to exercise its functions, and to exercise them over the constituent elements of the invading and conquering army!

The petition to that court indicated that Captain Snell and his men, in doing the acts complained of, were obeying the *military* orders of General Dow—in his capacity

of brigadier-general in command of the forts named—and were not simply the agents of a private citizen. (Record, 12.) Noticing the history of the times and the state of affairs then existing in that vicinity, no presumption of jurisdiction arises in favor of that court, especially over the officers and men of the Federal Army. Over them it had no jurisdiction. (Coleman *v.* Tennessee, 97 U. S., 515, 516, *et seq.*)

The state of war, and the consequent local supremacy of martial law, made this a court of inferior and limited jurisdiction, as effectually as it could have been done by legislation. It would not be presumed that a power thus limited and trammeled extended to cases brought against the officers of the Army of the United States for acts done in their military capacity. Such were the acts complained of in the original petition. (Record, 12.) The adjectives and epithets applied thereto do not change their character in this respect; nor does it make any difference whether General Dow communicated his orders to Captain Snell verbally or in writing; in secret, or on parade; in compliance with the instructions of superior officers, or by virtue of his own authority as the commandant of Forts Jackson and Saint Philip.

If the testimony taken after default properly constitutes a part of the record, to be inspected and considered by the court, it shows that General Dow simply sent out a foraging party to obtain necessary supplies for the consumption and support of the forces under his command. If the evidence cannot be looked into, the same fact is apparent from the declaration itself. In either view, under then existing circumstances, no presumption in favor of the jurisdiction of the sixth district court over the person and cause named arises, but the contrary. (97 U. S., 515, 516, *et seq.*)

If the orders of Generals Butler and Shepley can be noticed judicially, this want of jurisdiction will be apparent. This, however, we will show in considering the second question upon which the judges divided below.

3. If the orders of the military officers in Louisiana be not judicially recognized, that of the President should be. On the 20th October, 1862, he issued an order establishing a provisional court in New Orleans, upon the assumption that all judicial and other civil authority had been swept away by the rebellion.

This excludes any presumption in favor of the jurisdiction of any other tribunal in Louisiana after that date and until military occupation ceased.

This point also will be subsequently considered.

II.

Is the replication of the plaintiff a good and sufficient reply to the three special pleas pleaded by the defendant?

The first plea sets out the Louisiana ordinance of secession; the establishment and long maintenance by the State of a government independent of, hostile to, and in armed rebellion against, the United States; that, in suppressing such rebellion, the milltary forces of the United States took possession of all that part of Louisiana in which said sixth district court had jurisdiction, holding it in military occupation and under martial law till long after April 9, 1863, by reason whereof that court had no authority to render said supposed judgment, &c. (Record, 5, 6; *ante*, p. —.)

The second plea—after reciting the secession ordinance; the levy of war in its support; the Federal military occupation of Louisiana, under martial law; the official position of General Dow, as commander of the United States forces, acting under the Articles of War and the orders of the President, especially under General Order No. 109, directing military commanders in rebellious States to "seize and use any property, real or personal, which may be necessary or convenient for their several commands as supplies, or for other military purposes"—alleges that the chattels mentioned in Mr. Johnson's original petition, for which he recovered his supposed judgment, were seized by General Dow, in his said capacity as commanding officer, as supplies for the United States troops and for other military purposes; wherefore said sixth district court had no jurisdiction, &c. (Record, 6, 7, 8; *ante*, p. —.)

The third plea sets up the existence of rebellion and war, and the military occupation of Louisiana, whereby all the courts in New Orleans were deprived of all jurisdiction except such as was conferred by the commander of the United States forces there; that no jurisdiction was so conferred upon the said sixth district court over persons in the military service for acts performed in the line of their duty; that on April 9, 1863, it had no jurisdiction over such persons for any such acts; that General Dow was then commanding United States forces in Louisiana, acting under the lawful orders of his superior officer, &c.; and that the trespasses complained of were acts done in obedience to such orders, in performance of his duty as such officer, in seizing necessary supplies for the forces of the United States, by reason whereof the

said sixth district court had no jurisdiction to render its supposed judgment against him. (Record, 8,9; *ante*, p. —.)

The replication is that, at the time when, &c., "the said district court had lawful jurisdiction over and between parties and concerning causes of action within said district, and on said 9th day of April, 1863, had jurisdiction to render the judgment set forth and described in the declaration aforesaid, in favor of said plaintiff and against said defendant; and this he prays may be inquired of by the country." (Record, 10, folio 22.)

The replication properly concluded to the country, because the matters set up in the plea were not determinable by inspection. (Boyce *v.* Webb, 15 S. B. (Ad. & El.), 84; 23 L. J., S. B. Reps., 312.)

But, concluding to the country, because the pleas set up extrinsic facts, the replication is demurrable, in that it neither admits those facts, seeking to avoid them, nor traverses and denies them. (Chitty on Plead., *525 *et seq.*; Halstead *v.* Lyon, 2 McLean, 231–2.) It simply reiterates that the sixth district court had jurisdiction, which is a conclusion of law upon facts, without either admitting or denying those facts (or any one essential fact) upon which this legal conclusion depends. (Clearwater *v.* Meredith, 1 Wall., 25, 42.) A demurrer admits only *facts* (not law) well pleaded, and here was no statement of any fact whatever. No issue was tendered. The objection is not technical. It is impossible to conjecture from the language of this replication whether Mr. Johnson intended to deny, as *fact*, that the seizure of his chattels was for military uses, and in Gen-

eral Dow's official capacity; or to assert, as *law*, that, even if this were so, it did not oust the jurisdiction of the sixth district court. If it were intended to admit the facts, but to deny the sufficiency of them to constitute a legal defense, a demurrer should have been filed to the special pleas. If the truth of these pleas was controverted, a denial of them, concluding to the country, should have raised that issue. (Stephen on Pleading, *57; Maxwell *v.* Beltzhover, 9 Penn. St., 139, 140.)

"There is no question that the replication is not drawn with technical accuracy and correctness; and if the plea be a good plea of general performance, it is clear, both upon principle and authority, that a special breach ought to have been assigned in the replication; and the objection, if insisted upon by way of demurrer, for that cause, would have been inseperable. *The reason is, that the law requires every issue to be founded upon some certain point*, that the parties may come prepared with their evidence, and not be taken by surprise, and that the jury may not be misled by the introduction of various matters." (Minor *v.* Mechanics' Bk., 1 Peters, 67.)

The plaintiff protested against the reception of the demurrer. (Record, 11, middle.) His reason for doing so appears from this statement in his brief, page 4: "As defendant's pleas concluded with a *verification*, they only tendered an issue which was formed by plaintiff's replication. The pleadings were thus closed, and a demurrer to the replication was illegal and irregular, and should not have been received" (citing Gould's Pleadings, chap. 7, sec. 3, page 349).

Introducing new matter, the pleas properly concluded with a verification. (1 Chitty on Pleading, 583, being p. 713, bottom, of 16th Am. Ed., and cases there cited.)

The section of Gould's Pleadings above cited, p. 349, relates solely to the forming of an issue by a *traverse* of facts previously pleaded.

It will be noticed that our special pleas did not *traverse* the plaintiff's declaration (the general issue did that); but stated new facts in avoidance of it. These facts, or one vital fact, in turn, should either have been traversed or avoided in the replication, which did neither.

Jurisdiction or no jurisdiction, in this case, was not a question of *fact*, but of *law*. Hence, the facts cited in the special pleas were not, as plaintiff argues (Brief, 5, top), "mere matters of inducement," not traversable, but constituted the substantive defense. These facts being established by evidence, the want of jurisdiction followed as the inevitable legal consequence. (Clearwater *v.* Meredith, 1 Wall., 25, 42.)

The very sections cited by him from Gould and Chitty seem to us to support our view. Thus, Gould says (page 43, § 11), *inducement* "from its nature, as already explained, does not in general admit of a distinct denial or precise answer of any kind; for any sufficient answer to the *material* facts, alleged in the pleadings of the adverse party, covers all that he has alleged—including as well matter of inducement as matter of aggravation."

Chitty observes that if matter of inducement be not traversed, it need not be proved. (1 Chitty Pl., *299.) If, then, the plaintiff's replication does not traverse the chief facts stated in our pleas—showing that General Dow merely made a military seizure under competent authority—they must be accepted as true by a court or jury in determining the cause; and then, although the replication in form concludes to the country, there would

be really nothing for a jury to pass upon. This shows the insufficiency of the replication.

The defense argue that the replication is good, it not being necessary to traverse the facts pleaded, because they were merely *inducement;* thus admitting that if these facts are *not* inducement the replication is bad.

Referring to the citation of Gould's Pleading, p. 381, c. vii, § 55, we will repeat that the author there refers to "a *traverse* and its inducement"; whereas our special pleas did *not* traverse the plaintiff's declaration, but confessed and avoided the facts therein alleged. Mr. Johnson declared upon a judgment of the sixth district court. Our special pleas admitted the existence of such a record, but stated new facts to show that it was rendered under circumstances which deprived that court of authority to render the judgment. Thus it was not in itself a traverse. It tendered a *new* issue. Instead of demurring to it as immaterial, or traversing the facts, the replication merely reverts to and reiterates the general averment of the declaration. In the language of Ford, J., giving the opinion of the New Jersey court in the famous controversy of Gibbons *v.* Ogden: "The affair of a replication, which (when it does not add a similiter) is either to deny the matters in the plea and put them in issue to be tried by a jury, or else to confess and avoid them by advancing some new matter, seems not in this case to be at all fulfilled; * * * but, taking no notice of either of these branches of defense, and turning wholly away from the plea, it goes back to the beginning, and merely avers over again what was before set forth in the declaration. Being therefore altogether evasive, it must, for this reason, certainly be set aside." (Gibbons *v.* Ogden, 3 Halstead, Law, 293.)

It is, as before noticed, some vital *fact* (*e. g.*, that the taking of plaintiff's chattels by Dow's orders was a seizure, under proper orders, for military uses and purposes) that must be denied and put in issue or confessed and avoided by the replication, and it must not consist of a statement of *law* merely. (Clearwater *v.* Meredith, 1 Wall., 25, 42; United States *v.* Buford, 3 Peters, 31, middle; Miner *v.* Mech. Bk., 1 Peters, 67; Erskine *v.* Hohnbach, 14 Wall., 617; Watriss *v.* Pierce, 36 N. H., 232; Mason *v.* Craig, 3 Stewart & Porter, 389.)

The defendant was obliged to demur to the replication, as it offered no issue upon the facts pleaded, constituting his sole and sufficient defense; otherwise, had he gone to trial, he would have been deemed to waive his special pleas. (Ragan *v.* Gaither, 11 Gill & Johns., 472, 486.)

III.

Recurring to the question from the opinion in Gibbons *v.* Ogden, it proceeds: "Being therefore altogether evasive, it [the replication] must, for this reason, certainly be set aside. If then the *facts* [italicized in original] set forth in the plea, standing uncontroverted as to their truth, as they do for want of a replication, are sufficient in law to bar the plaintiff's action, the defendant must have judgment." (3 Halstead, 293.)

This, in effect, presents the second question upon which the judges below have certified a division of opinion: "Whether the said sixth district court, at the time and place aforesaid, had jurisdiction of the parties and the cause of action to render the judgment described in the present declaration." (Record, 23, middle.) The presiding justice, having found the replication good, held

that the court had jurisdiction to render the judgment. (Record, 23, bottom.) Whether he would have so found had he deemed the replication bad, and the facts of the pleas therefore admitted, we do not believe.

We now present the case upon the basis of the facts pleaded in bar.

1. We deny that, from May 1, 1862, up to and after April 9, 1863, this sixth district court was a court of general jurisdiction. (See the first division of this brief, *ante*, p. .)

On the contrary, it was limited, not only in the ordinary exercise of judicial authority, but in particular causes, by the dictation of the military commander; its judgments and decrees being "subject to modification by the paramount military authority." (See Judge Howell's statement in Addition to the Record, p. 3, folio 9.) To what extent this power of supervision was exercised may be seen by looking at the case of the Mechanics' Bank *v.* Union Bank (22 Wallace, 276, at page 278), where it will be seen that a judge of one of the courts there reversed his decision, previously announced, dismissing the suit, and awarded the plaintiffs $130,000; giving as the ground of this action that the counsel "need read no law to him, for the case would be decided under orders."

If Judge Howell's statement is not competent evidence under the pleadings and upon the issues as here presented, yet the facts stated in the plea (admitted to be true if the replication is bad), or even those of which the court takes judicial notice, establish the limited nature of the jurisdiction of the sixth district court at that time.

It being then and there an inferior court, of limited

jurisdiction, the plaintiff should have averred, or the record produced should have affirmatively shown, facts sufficient to give jurisdiction. (Galpin *v.* Page, 18 Wallace, 350.)

2. Practically, however, this question of the burden of proof is of small consequence. If it is incumbent upon General Dow to show that the court had *not* jurisdiction, the facts stated in his special pleas do show it; and, the replication being a nullity, the truth of these facts is admitted. (Thompson *v.* Whitman, 18 Wallace, 457.)

3. That the sugar, &c., taken was private property, or that it was owned by a loyal citizen, is no reason why it was exempt from seizure for military purposes; though it may be one why the United States, and not General Dow, should pay for it.

It was enemy property, in that it was the product of a hostile soil, seized within the limits of martial law, in hostile territory, upon the plantation upon which it was raised. Such property is not exempt from military seizure by reason of private ownership, nor do the exigencies of such occasions admit of any preliminary inquiry into the political opinions of the owner of property so found and seized.

A distinction is to be observed between the existence of the *right* and the extent to which it is usually deemed *politic* to exercise it.

"The strict right to enforce an old rule as matter of positive law may survive, although its enforcement may have become unusual." Creasey's First Platform of Int. Law, 496, §§ 471, 472, *et seq.*, where he recognizes this right over private property. (Manning's Law of Nations, 127.)

In the passage of Halleck's International Law, pages 456, 457, § 12, to which we are referred, he admits the abstract right to confiscate *all* private property found in conquered territory; and then comes his statement that "as a general rule" this abstract right is no longer enforced; but, in the succeeding section (p. 457, § 13) he mentions the exceptions to the rule, the second of which is "forced contributions for the support of the invading armies." (See also p. 458, § 15.)

In Brazelton *v.* Smith (1 Heisk., 61) General Halleck's instructions to the officer commanding in Tennessee are quoted: "You have the power to enforce all laws and usages of war, however rigid and severe these may be." In the opinion of the court in that case it is said "the general usage now is not to touch private property on land, *unless in special cases.*" * * * "This usage was adopted in the earlier stages of the Mexican war, * * but was departed from and military contributions levied before the close of the war. And *it was notoriously departed from by the Army of the United States* in every Southern State *during the late civil war;* and the private property of citizens, *whether friendly or unfriendly to the government*, was taken and appropriated to the uses of the Army, in most cases without any compensation." (Smith *v.* Brazelton, 1 Heisk., 59, 60, and authorities there cited. Coolidge *v.* Guthrie, 8 Am. Law Reg. (N. S.) 24.) Price *v.* Poynter (1 Bash, 387), where it was held that the Confederate forces might lawfully appropriate horses in Kentucky.

The cases cited by defendant in error from 1 Bush. follow Mitchell *v.* Harmony, being like in this, that the seizure in each case was not of enemy property, but of citizens of a friendly State, having also a friendly status.

In Terrill *v.* Rankin (2 Bush., 458), though Robertson, J., said that the rifling of a Kentucky bank by a Confederate quartermaster was not justified by the laws of war, yet he observed: "The right to impress property for necessary and immediate military use, or levy contributions of articles of subsistence, is still admitted to be a belligerent right," &c. (2 Bush., 458.) The case in 13 Howard, 430, would be analogous if it were a suit brought by a Mexican in Mexico, during the war, in a Mexican court against General Mitchell.

4. If the right existed to seize sugar, &c., for military uses, under General Order No. 109, issued by the commander-in-chief, General Dow's plea setting up that order and his action under it—admitted to be true by failure to file a sufficient reply—is a bar to this suit, unless it be held that he was bound to appear and make that defense before the sixth district court when summoned into that tribunal to answer to Mr. Johnson's petition.

As before remarked, it was incumbent upon the plaintiff to declare and show that the sixth district court then had the jurisdiction it assumed to exercise. Those facts which are judicially noticed, however, disprove the existence of any such jurisdiction. (Coleman *v.* Tennessee, 97 U. S., 515, 516.)

Though the ordinance of secession might not abridge or affect that jurisdiction (6 Wall., 450), it by no means follows, nor is it true, that the military occupation by our forces had not such an effect. That Mr. Dow could have been properly summoned before that court had he, prior to 1861, while a private citizen, taken by force the silver ware and sugar of Mr. Johnson, there is no ques-

tion; and that court could then have lawfully passed upon such a complaint; but this court is not compelled to close its eyes to all that subsequently occurred, and to the situation of affairs there April 9, 1863, and the reasons for General Dow's action. (Ho Ah Kow *v.* Nunan, in Am. Law Reg. for Nov., 1879, vol. 18 (N. S.), 680.) These circumstances necessarily abridged the extent and exercise of the jurisdiction of that court. It is not true that Judge Howell held under his old commission. He held by permission of the military authority. This is apparent from the fact that every other judge was displaced and that he was, at the pleasure of the military power, transferred to a bench to which he never had been elected. (Handlin *v.* Wickliffe, 12 Wall., 173.) It was the mere accident of personal acceptability that induced the commander there to continue him in the same position to which he had been elected.

General Butler's proclamation of May 1, 1862, must be taken as an entirety. When he said "Civil causes between party and party will be *referred* to the ordinary tribunals," he no more meant that his officers and men could be there sued in trespass or trover for every act of foraging under orders, than he did in the next sentence, authorizing the levy of taxes for repairing and lighting streets, &c. "in the usual manner"; that these taxes could be exacted from the forces under his command, because they happened to be temporarily domiciled in New Orleans.

Mr. Johnson filed his petition and recovered his alleged "judgment" after General Shepley had been commissioned as military governor. By his General Order No. 13, found twice in the "Addition to the Record," it

will be seen that only civil causes between party and party "*not involving any question of a political or military character*" were remitted to the sixth and other district courts.

The case of Pepin *v.* Lackenmyer, cited from 45 N. Y., 27, had no military ingredient.

The continuance of the course of civil and penal law mentioned by Lieber (defendant's brief, 8, 9) means as to civilians, not as to the invading army.

The fault of the argument for the defendant in error, as we conceive, is in assuming that "the actual presence" of General Dow in New Orleans, irrespective of the reason of his being there, and of his position, gave jurisdiction; and in assuming that the case is the same as if he had been cited before a court in New York City. His argument concedes no effect to the events that were transpiring in Louisiana; nothing to the military character and duty of General Dow.

This argument is fully answered by the opinion in Coleman *v.* Tennessee, 97 U. S., 509, 510, 515, 516, *et seq.* It is there said, "It is well settled that a foreign army permitted to march through a friendly country or to be stationed in it by permission of its government, is exempt from the *civil* and criminal jurisdiction of the place." * * * "If an army marching through a friendly country would thus be exempt from its *civil* and criminal jurisdiction, *a fortiori* would an army invading an enemy's country be exempt." (97 U. S., 515, 516.)

The plaintiff in error has sufficiently answered this suit by the citation of this opinion. It shows that the sixth district court, upon reading the plaintiff's petition alone, should have dismissed it for want of jurisdiction.

5. The first special plea is good, asserting those facts which deprived the sixth district court of "jurisdiction to render the judgment described in the declaration in favor of said plaintiff against this defendant." (Record, 6; ante, p. —.)

The petition showed General Dow to be an officer in the Federal Army. Hence the recitations of this plea indicated the want of jurisdiction; or, rather, it appeared without any plea. (97 U. S., 515, 516.)

6. Certainly, then, the second plea is good. It sets out the explicit order under which General Dow was acting as a military commander.

7. The third plea, stating substantially the same essential facts, rests upon the ground that, on the 9th of April, 1863, that court "had no jurisdiction over any person engaged in the military service of the United States." (Record, 9, top; ante, p. —.) The legal correctness of this position is determined in Coleman *v.* Tennessee, 97 U. S., 515, 516. The replication denies no fact stated in either plea.

8. If any court could take cognizance of complaints against the officers or soldiers of the Federal Army in Louisiana in 1863, it would have been the provisional court established by the President's proclamation in October, 1862. (The Grapeshot, 9 Wall., 129; Mechanics' Bank *v.* Union Bk., 22 Wall., 279.)

But the acts of such persons, at that time and place, were purely of military and not civil discipline and cognizance. (97 U. S., 513.)

9. As special stress seems to be laid in the evidence upon the taking of a pitcher and other articles of table

use, it may not be improper to remark that the right of seizure does not depend upon the material of which an article is fabricated. It is its adaptation to a military use in the field, tent, hospital, or at headquarters, that gives the right to impress it into service. There is the same right to take a pitcher worth $100 that there is a horse worth $500 or sugar worth $1,500. Of course, a pitcher, horse, or whatever may be taken, should be entered upon the property account of the United States and transferred to the successor of the officer in charge. There is no question made about this here. The complaint is for the original taking, and this was justified by military law. If it were wrongful, the sixth district court had then no jurisdiction to redress the wrong committed by a person so situated under then existing circumstances.

CHARLES DEVENS,
Attorney-General.
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Supreme Court of the United States.

NEAL DOW, *Plaintiff in Error*,

v.

BRADISH JOHNSON.

BRIEF FOR DEFENDANT,

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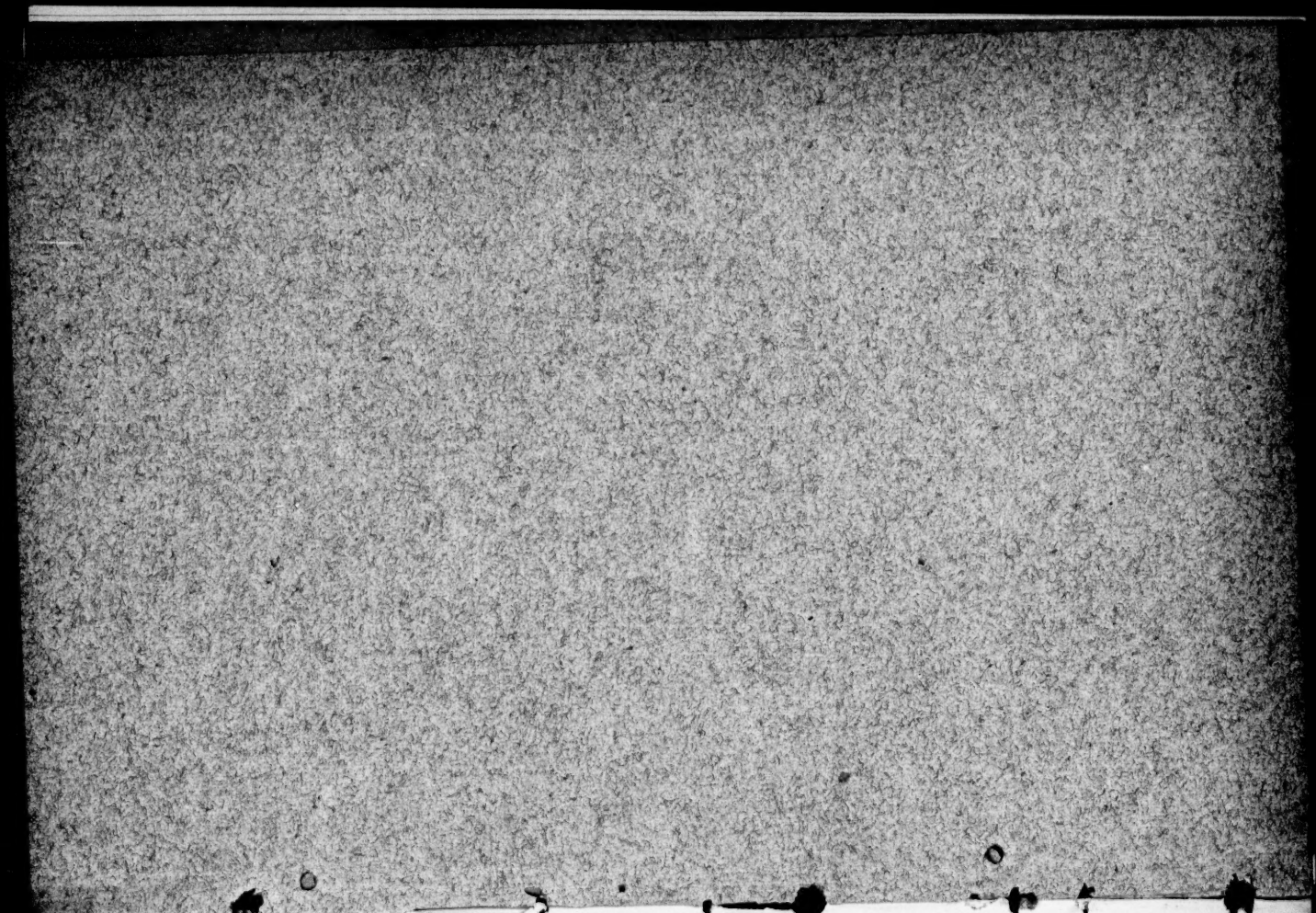

Supreme Court of the United States.

NEAL DOW, *Plaintiff in Error*,
v.
BRADISH JOHNSON.

From the District of Maine in the First Circuit, September Term, A. D. 1876.

BRIEF FOR DEFENDANT.

This is an action upon a jugdment recovered by the defendant against the plaintiff in error, in the Sixth District Court of New Orleans, in the State of Louisiana, one of the United States, on the ninth day of April, A. D. 1863.

At the time of the institution of the suit upon which this judgment was rendered, and ever before and since, Johnson was and had been a loyal citizen of the State of New York, and was at the time the owner of a plantation in Louisiana.

Neal Dow, at the time of the commencement of the suit and of the rendition of judgment against him, was a military officer in the service of the United States, stationed at the Parapet, near the city of New Orleans.

The plaintiff being a loyal citizen, all his rights, as such, remained during the rebellion in all respects unimpaired, as they had existed at the commencement of hostilities.

Williams v. Bruffy, 6 Otto., p. 187.

At the trial of the cause, the defendant pleaded the general issue, *nul tiel record*. To which the plaintiff replied that there is such a record, and prayed its inspection.

This replication, without any similiter, created an issue.
Gould's Pleading, ch. 6, sec. 17, p. 289.

"Under the first plea, the plaintiff having introduced the record, the finding of the Court is in his favor that there is such a record as that set forth and described in the declaration."

Vide record.

It follows that the plaintiff must have judgment, unless, under some one of the three special pleas which were also pleaded by the defendant, he can make good defence to the suit.

The record presents two questions, upon which there was a division of the Court.

I. "Whether the replication is a good and sufficient reply to the three special pleas pleaded by the defendant."

The defendant pleaded three several pleas, stating in each various matters of inducement, but each concluding with the allegation that, for the reasons set forth therein, the Sixth District Court of New Orleans had no jurisdiction to render the judgment upon which this suit is brought.

The first plea sets forth the secession of Louisiana from the Union, the establishment of an independent Government, which was maintained until long after the rendition of the said judgment of the Sixth District Court, the rebellion, the levying of war to uphold this independent Government—that the military forces of the United States engaged in suppressing the rebellion took forcible possession of that part of Louisiana comprising the district of said Sixth District Court of New Orleans, and held military possession of it

under martial law, until long after the ninth day of April, A. D 1863—by reason of all which the said Court had no jurisdiction to render this judgment.

The second plea sets forth the same alleged facts as to secession, rebellion, military occupation, martial law, levying war, &c., and that the defendant, from May 1, A. D. 1862, to long after April 9, A. D. 1863, was a Brigadier General in the army of the United States, acting under the orders of the President of the United States according to the laws thereof and the Articles of War, and especially under the General Order, No. 109, dated July 22, A. D. 1862, (which order is specifically stated therein) and that under said authority in his said military capacity, he seized from the plaintiff certain *chattels, necessary and convenient for supplies for the army* and for other military purposes, and alleges that, *for the reasons aforesaid*, the said Sixth District Court of New Orleans had no jurisdiction to render the judgment upon which this action is brought.

The third plea sets forth the same alleged facts as to secession, rebellion, military occupation, &c., that the said Sixth Disirict Court, from May 1, A. D. 1861, to April 9, A. D. 1863, and on said ninth day of April, A. D. 1863, had no jurisdiction over any person engaged in the military service of the United States in the State of Louisiana, that the defendant was engaged in that service as a Brigadier General, that, in that capacity, acting *in obedience to the orders of his superior officers*, he seized from the plaintiff certain chattels, necessary and convenient for the army and for other military purposes, and alleges that *for the reasons aforesaid* the said Sixth District Court had no jurisdiction to render the judgment upon which this action is brought.

The first special plea is based upon the idea that the ordinance of secession adopted by Louisiana, the military occu-

pation of the State and the promulgation of martial law, took away (*per se*) from the Sixth District Court its jurisdiction to render the judgment now in suit; the second claims that the defendant was justified in seizing the plaintiff's property under General Order, No. 109, issued by the President August 16, A. D. 1862; the third assumes the broad ground that the Sixth District Court had no jurisdiction over any person in the army of military occupation under any circumstances.

To these pleas the plaintiff replies that the said Court *had jurisdiction* to render said judgment.

As defendant's pleas concluded with a *verification*, they only tendered an issue which was formed by plaintiff's replication.

The pleadings were thus closed, and a demurrer to the replication was illegal and irregular, and should not have been received.

Gould's Pleadings, ch. 7, sec. 3, p. 349.

Defendant's demurrer was received by the Court by special order.

Defendant demurred to plaintiff's replication, which replication alleges *that the Sixth District Court of Louisiana had jurisdiction* of the cause of action and the parties.

This is a general demurrer.

It follows, from the filing of this demurrer, that, if *the plaintiff's replication is good*, judgment must be rendered in favor of the plaintiff, as the demurrer admits the allegations of the replication.

The only objection raised by defendant to plaintiff's replication is, that it does not deny in express terms the facts alleged in the pleas, and does not answer them.

The answer to this objection is, that the facts alleged in the second, third and fourth pleas (secession, rebellion, &c.) are mere matters of inducement, and should not be formally traversed.

Gould's Pleading, ch. 31, sec. 9, p. 42.
1 Chitty's Pleading, p. 290, (14th Am. Ed.).
1 Chitty's Pleading, p. 612, (14th Am. Ed.).

The question raised by the second, third and fourth pleas of the defendant is that of the jurisdiction of the Sixth District Court of New Orleans, and the answer to the denial of the jurisdiction covers not only the question of jurisdiction, but also all matters of *inducement to that question.*

Gould's Pleading, ch. 3, sec. 11, p. 43.
Ib., ch. 7, sec. 55, p. 381.

So that the replication is a good and sufficient answer to the special pleas of the defendants.

It was incumbent on defendant to prove the matters of inducement alleged in his pleas, which he did not do.

1 Chitty's Pleading, p. 292, (14th Am. Ed.).

II. The second question presented upon the Record is, "Whether the said Sixth District Court, at the time and place alleged, had jurisdiction of the parties and the cause of action to render the judgment described in the present declaration."

Let the first inquiry be, Had this Court jurisdiction of the cause of action or subject matter of the judgment?

(1). The record is *prima facie* evidence that the Court had jurisdiction.

1 Chitty's Pleadings, 485 (1), 14th Am. Ed.

(2). If the defendant denies the jurisdiction of the Court in which a judgment is rendered (it being a Court of general jurisdiction), it is presumed to have jurisdiction of

District Court held its regular session according to the time fixed by the Statutes of Louisiana.

Judge Howell, the Judge of that Court Bench, having been always a loyal man, early after the capture of the City took the oath of allegiance and resumed the functions of his office, with the recognition and approbation of the military authorities. He continued under his old commission, received from the State of Louisiana before attempted secession, and which he had held and acted under, after the act of secession and during Confederate rule.

This Court, retaining and exercising all the powers it had possessed, as originally constituted, had general jurisdiction in all civil causes, where the defendant was a resident of the parish of Orleans, *or was a non-resident of the State, and was served with process under it.*

(7.) Neither the proclamation of martial law, nor the military occupation of the City of New Orleans, necessarily deprived the civil tribunals of the State of Louisiana of their authority and jurisdiction.

Pepin v. Lackenmayer, 45 New York, 27.

Planter's Bank v. Union Bank, 16 Wallace, 483.

"Martial law consists in the suspension, by the occupying military authority, of the criminal and civil law and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, *so far as military necessity requires this suspension, substitution or dictation.* The commander of the forces may proclaim that the administration of all penal and civil law shall continue, either in whole or in part, as in times of peace, unless otherwise ordered by the military authority.

"All civil and penal law shall continue to take its course (usual) in the enemy's country under martial law, *unless interrupted or stopped by order of the occupying military power;* but all the functions of the hostile government, legislative, executive or administrative, whether of a general, provin-

cial or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader."

Instructions for the government of armies of the United States in the field, prepared by Francis Leiber, Sec. 3 and 6.

General Order, No. 100, Adjutant General's office.

The Sixth District Court was a constitutionally and legally established Court of the State of Louisiana, recognized to be so by the National Military Authorities in that State, and was never "interrupted or stopped by order of the occupying military power." It claimed and exercised jurisdiction over the subject matter of the judgment sued in this action, and over the parties, directly under the eye of the "occupying military power," without any interference by that power.

(8.) The act of secession, adopted by the Legislature of Louisiana, was simply void. It did not take the State out of the Union, or nullify the laws of the United States, or affect the jurisdiction of the State Courts.

Nothing is better settled in the jurisprudence of this Court (says Mr. Justice Strong) than "that all acts done in aid of the rebellion were illegal and of no validity. The principle has become axiomatic."

The second enquiry is, Had the said Sixth District Court jurisdiction over the party defendant in said cause?

The answer to this question is, that the actual presence of the defendant (Dow) at New Orleans, and the personal service of the process of the Court upon him, as appears by the record, gave the Court jurisdiction of his person.

Dewing v. Perdicaries, 96 U. S., 193.

When it appears that the Court had jurisdiction of the cause, and that the defendant was duly served with process,

the judgment is conclusive for all purposes and is not open to enquiry on its merits.

Christmas & Al. (error) v. Russell & Al., 5 Wallace, 290.

Planters' Bank v. Union Bank, 16 Wallace, 483.

As the ordinance of secession was simply void, it had no effect upon the jurisdiction of the Sixth District Court; nor did the proclaiming martial law necessarily deprive that Court of jurisdiction; nor does the President's order No. 109, if it has any effect, afford any justification for the seizure of any property, real or personal, unless necessary and convenient for army supplies or for other military purposes, and it will not be pretended that a silver pitcher and silver spoons were necessary for army supplies or for other military purposes.

So that the defendant (Dow) must rest his defense on the proposition of the third special plea, that the Sixth District Court had no jurisdiction over the person of the defendant, because he was a Brigadier General in the Army of the United States, acting under the orders of his superiors.

In maintaining this defense, the defendant's counsel enunciates the general proposition that "the same rules and principles are applicable to this case as to cases arising under a war with a foreign power."

But neither the United States Government nor the United States Courts have asserted or maintained such a doctrine as this.

This is not a case of a foreign war, in which the enemy's courts assumed jurisdiction over an officer of the invading army.

During the period of the civil war, the United States forces were engaged in putting down an internal insurrec-

tion, in suppressing a rebellion with a view to the re-establishment and ultimate restoration of the national authority.

The Government maintained that the various ordinances of secession were void; that they had no effect to take a State out of the Union, or to annul the constitution and the laws. It did not recognize the Confederacy established by the seceding States as a legitimate government, but only "as simply the military representative of the insurrection against the authority of the United States."

But, as is said by the Court in the case of Williams v. Bruffy, 6 Otto., 176, the United States, upon considerations of justice, humanity and policy, *conceded certain belligerent rights* to those in a state of insurrection, but this impaired in no respect the rights of loyal citizens as they had existed at the commencement of hostilities.

In the case of How v. Lockhart, 17 Wallace, 571, the Court say:

"The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in times of peace. *No one, that we are aware of, seriously questions the validity of judicial or legislative acts touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National Government, or did not impair the rights of citizens under the Constitution.*"

As soon as the military forces of the United States wrested any portion of the territory of the United States from the rebellious citizens and acquired full and complete control of it, the normal condition of affairs became restored. It was not held as conquered territory acquired in a foreign war.

In the case of the Venice, 2 Wallace, 277, the Court say: "As far as possible, such parts of the insurgent States as came under national occupation and control were treated as if their relations to the National Government had not been interrupted."

Such was the policy of the United States at the time of the initiation of the original suit against the defendant in the Sixth District Court and the rendition of judgment thereon, and the United States had full control and undisputed possession of the territory of New Orleans, in which the Sixth District Court was located.

Mr. Justice Strong, in Planters' Bank v. Union Bank, 16 Wallace, 498, says that at New Orleans "undisturbed possession was maintained ever after its capture."

At that time (of the institution of proceedings by the plaintiff against the defendant, and at the time of rendition of the judgment in the case) the city of New Orleans, where the Sixth District Court of Louisiana was held, and the adjacent territory, was in a condition of actual peace, occupied and controlled by the national troops. No military operations were in progress there. "*The National Government did not regard districts so permanently occupied and controlled as in actual insurrection, or its inhabitants subject in other respects to be treated as enemies.*"

By the President's proclamation, the City of New Orleans at that time had ceased to be territory in actual insurrection. The occupation by military control was substantial, complete and permanent. Being such, it drew after it the full measure of protection to persons and property, consistent with the necessary subjection to military government. It did not, indeed, restore peace, or in all respects former relations; but it replaced rebel by national authority, and rec-

ognized to some extent the conditions and responsibilities of national citizenship.

The Venice, 2 Wallace, 277.

At that time Louisiana was one of the States of the Union, and within the Union. The City of New Orleans and vicinity was in the undisturbed possession of the United States. There was no actual state of war there, nor any conflict of armies. Business had been resumed. The Courts of Justice were regularly performing their duties. The defendant's command was quietly encamped at the Parapet, near the City, merely performing police duty.

The defendant was not engaged in any active military operations. His military duties did not prevent his attendance at the Court and making his defence, if he had any. No evidence is offered of the existence of any condition of military affairs, excusing or justifying defendant's refusal to obey a judicial summons.

The original suit was in the nature of an action of trespass; if the defendant had any defence to make it was his duty, after personal notice, to appear and make it.

If the Court had no jurisdiction, or the President's proclamation justified his conduct, he should have appeared and so pleaded.

If, under the then existing conditions, the Sixth District Court was under the control of the Military Governor of Louisiana, and the defendant desired military intervention in his behalf, it was in his power to have it if the commanding General deemed it a proper case for his interference to protect an officer, who had been guiltless, in the discharge of his duty.

As matter of fact, there was no interference by the military authorities with the exercise of the jurisdiction of

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As matter of fact, there was no interference by the military authorities with the exercise of the jurisdiction of

this Court, in the action upon which the judgment now in suit was recovered.

If, after the service of the judicial process, with the plaintiff's silver pitcher in his possession, the badge of his wanton and guilty violations of his duty as an officer, he preferred to submit to the jurisdiction of this tribunal rather than subject himself to a military Court of enquiry, it was his own choice, and he cannot now be permitted to derive any advantage from his negligence or deny the jurisdiction of the tribunal to which he *voluntarily* submitted, rather than be subjected to a Court of enquiry.

So that the defendant (Dow) stands in the position of any person summoned into Court, who, refusing to appear in defiance of the summons of the Court, loses his rights, if he had any, by his neglect to appear and make his defence.

In such a case the judgment is valid, and remains so until reversed by due process of law.

If, in time of peace, the defendant, an officer of the United States Army, had been stationed at the "Parapet," and the judicial summons of the Sixth District Court of New Orleans, in just such a suit as that upon which the judgment now sued was recovered, had been served upon him, it would not be contended that he would not be bound to respond to the summons, and that the judgment recovered, in case of default, would not be valid and conclusive upon him.

Now, there was no such condition of military affairs at that time in New Orleans, as would make this case different from that.

It might as well be said that an officer of the army, stationed at Governor's Island, in New York Harbor, during the civil war, would not be bound to respond to a judicial summons from a New York State Court.

That the State Courts of Louisiana, which, like the Sixth District Court of Louisiana, had been recognized and authorized by the military commanders, had jurisdiction over unlawful acts and trespasses upon loyal citizens or their property, committed by the officers or soldiers of the United States Army, is very clearly shown by an examination of the Act of Congress of March 3, 1863, entitled an Act relating to *habeas corpus*, and regulating judicial proceedings in certain cases.

U. S. Statutes, Vol. 12, p. 756, ch. 81.

The fourth section of that Act enacts "that any order of the President, or under his authority, made at any time during the existence of the present rebellion, shall be a *defence in all Courts* to any action or prosecution, civil or criminal, pending or to be commenced for any search, seizure, arrest or imprisonment made, done or committed, or acts omitted to be done, under and by virtue of such order, or under color of any *law of Congress*, and such defence may be made by special plea or under the general issue in the insurrectionary districts in which the national authority had been restored by undisputed possession and control."

By the fifth section of the same Act, all civil suits and criminal prosecution of the character described in the fourth section may be appealed from the State Courts to the United States Courts.

At the date of the rendition of this judgment, the United States had undisputed possession and control of New Orleans, the territory embraced within the jurisdiction of the Court which rendered the judgment, and the Sixth District Court of New Orleans was recognized by the Military Governor of Louisiana as a tribunal having full jurisdiction in all civil causes arising within its limits. It was not a United States Court nor a military Court, but just such a

this Court, in the action upon which the judgment now in suit was recovered.

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Court as was contemplated by this Act of Congress, which was evidently designed to meet the class of cases to which the original suit (Johnson v. Dow) belonged.

If the defendant (Dow) was justified under this Act of Congress for the outrage perpetrated by him upon the plaintiff's (Johnson) property, the statute above cited made it his duty to appear in the Court to which he had been cited, and there have made his defense by plea.

But the seizure made by General Dow (defendant) was not by order of the President, or under his authority. He was not acting under any order from a superior officer; and, if he had been, the seizure of the silver plate (not needed for army supplies or use) was unlawful, and a grossly wanton abuse of military power.

The summary of the case, then, is this:

Upon the first question arising in the case, "Whether the replication is a good and sufficient reply to the three special pleas pleaded by the defendant," it is contended, upon the authorities cited in this brief, that the defendant's replication is good, the plaintiff's demurrer to it bad, and that judgment for the plaintiff should follow upon the pleadings.

Upon the second question arising in the case, "Whether the said Sixth District Court, at the time and place alleged, had jurisdiction of the parties and the cause of action to render the judgment described in the present declaration," it is contended that the said Sixth District Court was, prior to the rebellion, a legal, constitutional Court of the State of Louisiana, having jurisdiction of the subject matter which was the basis of the original judgment now in suit; that neither the act of secession, nor the proclamation of martial law, nor the military occupation of the city of New Orleans,

deprived the civil tribunals of the State of Louisiana of their authority and jurisdiction, but that their authority and jurisdiction remained without change until taken away or modified by military order; that the military authorities did not, at any time, deprive the Sixth District Court of New Orleans of its authority and jurisdiction, but, on the other hand, recognized and confirmed them, and General Butler, in his proclamation of May, 1862, when he took possession of the captured city of New Orleans, said, "civil causes between party and party will be referred to the ordinary tribunals"; that, in truth, this Court continued to exercise its jurisdiction as prior to the rebellion, without interruption or suspension; that the late civil war was not a foreign war, nor do the same rules and principles apply in this case as to cases arising under a war with a foreign power (as claimed by the defendant), nor have the United State Government or the United States Courts maintained such a doctrine; that the military forces during the war were engaged in putting down an internal insurrection, with a view to the re-establishment and ultimate restoration of the national authority; that upon considerations of justice, humanity and policy, the United States Government conceded certain belligerent rights to those engaged in the rebellion; *that upon the cessation of active hostilities, such parts of the insurgent States as came under national occupation and control were treated as if their relations to the national government had not been interrupted;* that at the time of the initiation of the original suit of Bradish Johnson v. Neal Dow, and of the rendition of judgment therein, the United States *had full control and undisputed possession of the territory in which the Sixth District Court was located;* that at that time New Orleans and vicinity was in a condition of actual peace, business having been resumed, military operations having ceased, and Gen. Dow, the defendant, being at Camp Parapet in the performance of police duty; that the said Dis-

trict Court was then in the full possession and exercise of its judicial functions, having full jurisdiction of all civil causes; that the process upon which the original judgment sued in this action was based was duly issued from said Court, and PERSONAL SERVICE therof was made upon the defendant; that the defendant at that time was not engaged in active military operations, nor was there any military or other emergency to prevent his attendance upon the Court to which he had been summoned; that the Act of Congress, of March 3, 1863, ch. 81, gave him a defence to the suit, and imposed upon him the duty of making it; that he might also have protected himself by a special order from the commanding General, depriving the Court of its jurisdiction in the case, if, in the opinion of that commander, justice had required it; that, being in the possession of a portion of the stolen property, he preferred to submit to a judgment against him in the State Court rather than to a military Court of enquiry; that by design and without accident, he chose to disregard the summons of the Court, and voluntarily submitted to its jurisdiction and to a default in said Court; that it is too late for him to plead in this suit the want of jurisdiction in the Court, and that such a plea cannot now avail him; that the judgment in this suit stands unimpeached and valid, entitled to full faith and credit in all the United States, until it shall be legally reversed by the action of the Courts of Louisiana; that this defendant occupies the position of any citizen, who, by his own deliberate act, or his own negligence, has failed to avail himself of a defence which the law gave him, and he must suffer the consequences of his illegal acts.

Peon Bradbury